(27,126)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 375.

AMERICAN KNIFE COMPANY AND ÆTNA LIFE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

GEORGE SWEETING.

IN ERROR TO THE SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT, OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Record on appeal to Court of Appeals	6	1
Statement	1	1
Notice of appeal	2	2
Employer's first report of injury	4	2
Attending physician's report	6	4
Employee's claim for compensation	9	5
Notice of award, February 28, 1918	13	7
Agreement as to wage	15	8
Notice of award, March 11, 1918	16	9
Attending physician's report	18	10
Hearing of March 27, 1918	21	12
Hearing of May 23, 1918	21	12
Testimony of Dr. W. F. Law	22	12
George Sweeting	24	14
Mrs. George Sweeting	31	19

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 4, 1919.

	Original.	Print.
Stipulation as to photographs	34	20
Notice of award, May 27, 1918	35	21
Conclusions of fact, ruling of law, award, and decision	36	21
Affidavit of no opinion	41	23
Certification of record	42	24
Order settling case	43	24
Order of affirmance	44	24
Order of Commission	46	25
Notice of appeal	47	26
Affidavit of no opinion	49	27
Certification of record	50	27
Order settling case	50	27
Remittitur	51	28
Judgment on remittitur	53	29
Opinion, Cardozo, J.	55	30
Præcipe for record	61	34
Clerk's certificate	64	35
Return to writ of error	66	36
Certificate of lodgment	68	37
Bond on writ of error	69	37
Prayer for reversal	75	44
Petition for writ of error	76	45
Assignment of errors	82	48
Writ of error	84	49
Citation and service	86	50

a Court of Appeals, State of New York.

Before State Industrial Commission.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent, for Compensation under the Workmen's Compensation Law.

against

AMERICAN KNIFE CO., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

Record on Appeal.

William H. Foster, Attorney for Appellants, Syracuse, N. Y.
Hon. Merton E. Lewis, Attorney General, Attorney for State Industrial Commission, Respondent, The Capitol, Albany, N. Y.
Hon. Robert W. Bonynge, Counsel for State Industrial Commission, 230 Fifth Ave., New York City.
Olmsted, Van Bergen & Searl, Attorneys for Respondent, Syracuse, N. Y.

1 Court of Appeals, State of New York.

Before State Industrial Commission.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent, for Compensation under the Workmen's Compensation Law.

against

AMERICAN KNIFE CO., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

Statement Under Rule 41.

This is an appeal from an order of the Supreme Court, Appellate Division, Third Department, made and entered in the office of the Clerk of the Appellate Division, Third Department, on November 25, 1918, which affirmed an award of the State Industrial Commission made and entered in the office of the Commission on the 27th day of May, 1918, and also from the order of the Commission
2 making the order of the Appellate Division the order of the Commission dated December 9, 1918. This proceeding was commenced by filing with the State Industrial Commission Employer's First Report of Injury, dated Dec. 21, 1917. There has been no change of parties or attorneys since the commencement of this proceeding.

Notice of Appeal.

Supreme Court, Appellate Division, Third Department.

Before State Industrial Commission.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent, for Compensation under the Workmen's Compensation Law.

VS.

AMERICAN KNIFE Co., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

SIRS: Please take notice that the American Knife Co., Employer, and the Ætna Life Insurance Co., Insurance Carrier, hereby appeal to the Appellate Division of the Supreme Court, Third De-
3 partment, from an award of the State Industrial Commission made and entered in the office of the State Industrial Commission on the 27th day of May, 1918, and from each and every part of said award.

Dated, June 19, 1918.

Yours, etc.,

WILLIAM H. FOSTER,
Attorney for Appellants.

Office & P. O. Address, Union Bldg., Syracuse, N. Y.

To Joseph H. Hollands, Clerk Supreme Court, Appellate Division, Third Department, Albany, N. Y.; Hon. Merton E. Lewis, Attorney General, Attorney for State Industrial Commission, Albany, N. Y.; Robert W. Bonynge, Counsel State Industrial Commission, 230 Fifth Ave., New York City; George Sweeting, Claimant, 14 River St., Baldwinsville, N. Y.; Olmsted, Van Bergen & Searl, Attorneys for Claimant, 474 So. Salina St., Syracuse, N. Y.

4 *Employer's First Report of Injury.*

Ætna Life Insurance Company,

Accident & Liability Department,

Hartford, Connecticut.

New York Office.....100 William Street
Albany Office.....Arkay Building
Syracuse Office.....Union Building
Rochester Office.....Dake Building
Buffalo Office.....White Building

Bureau of Workmen's Compensation.

Claim No. —.

Case of —— ——.

Employer's name. American Knife Co. Office Address. Baldwinsville, N. Y. (Street and number, city or village and county.)
Business (goods produced, work done or kind of trade or transportation). Manufacturing Machine Knives.
Location of plant or place of work where accident occurred (if not at office address). Baldwinsville, N. Y. (Street and number, city or village and county.)
Date of accident. 21 day of December, 1917; hour of day, 2.15 P. M. Hour injured employee began work that day. 7 A. M.
Did accident happen on the premises? Yes. Away from the plant of employer? —. If away from the plant, state where? —.

5 Full name of injured employee. George Sweeting. Address. River St., Baldwinsville, N. Y. (Street and number, city or village and county.)
Sex. Male. Age 34. Single, married widowed or divorced. Married. Speak English? Yes. If not, what language? —.
Occupation when injured? Burring slots on planes knives. In what department of plant or branch of work? Grinding Dept.
Was injured employee doing his regular work? Yes. If not, state regular occupation. —.
How long was injured person in your employment? 7 yrs. Piece or time worker? Both. Wages or average earnings per day? $2.50. Working hours per day. 9.
Name of machine, tool or appliance involved, if any. Emery wheel. By what kind of power driven? Water.
Hand or mechanical feed? Hand. Part on which accident occurred? Emery wheel.
Describe in full how the accident occurred. Employee was burring out slot on planes knife, cramped knife on emery wheel which broke the wheel, broken parts of wheel flew in face, badly lacerating the nose.
State part of person injured and nature of injury. Nose badly lacerated.
Did injury cause loss of any member or part of member? No. If so, describe exactly. —.
Was medical attendance provided by you? Yes. How soon after accident? At once. Name and address of physician. Dr.
6 R. L. Sullivan, Baldwinsville, N. Y. To what hospital was employee sent? St. Josephs.
If not sent to hospital, where is he? —. Are you still providing medical attendance? Yes.
Has employee returned to work? No. Date and hour of return. —. If so, is he fully recovered and earning full wages? —.

If not returned to work, probable length of disability (give your best estimate). —.

In what company is Compensation Insurance carried? (must be answered) Ætna Life Insurance Co.

Signed at Baldwinsville, N. Y. this 21 day of December, 1917.

Firm name American Knife Co. Signed, E. P. Tooley. Official title, Secretary.

Attending Physician's Report.

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 1 Madison Avenue.

Bureau of Workmen's Compensation.

File No. —. Case No. —.

All questions in this blank should be answered, and the report should contain an account of all injuries, no matter how
7 trivial. Fill out blank in ink, using pen or typewriter, and mail promptly to the Commission at its New York City Office.

1. Name of injured person. George Sweeting. Address. Baldwinsville, N. Y.

2. Date of accident. Dec. 21, 1917, at 2:10 P. M. Was first treatment rendered by you? Yes. When? Dec. 21, '17.

3. If not, by whom? —. Address. —.

4. If an assistant, consultant or anæsthetist was necessary give name and address. Sent to Hospital.

5. Who furnished necessary medical supplies? R. L. Sullivan. Was a nurse ordered by you? No.

6. Name of nurse. —. Address. —.

7. Was injured person removed to hospital? Yes. Name of hospital. St. Joseph's. Address. Syracuse, N. Y.

8. Give an accurate description of the nature and extent of the injury. Deep cut on left side of upper lip. Deep cut extending from upper lip through nares to floor of nose. Lettum broken and same cut extending across the bridge of nose to right side of nose.

9. Describe the treatment? Sutures and selie forms in nose. Plastic surgery.

10. Are the symptoms from which he is suffering due entirely to this injury? Yes.

11. Is he able to attend to any part of present or any other occupation? No.

8 12. Has the injury resulted in a permanent disability? Yes. If so, what? Disfigurement of face from cut on lip and injury to nose. (Permanent disability, such as loss of whole or parts of fingers, etc., must be accurately marked on diagram.)

13. Has previous sickness or injury contributed to his disability? No. If so, to what extent? —.

14. Is there evidence of syphilis? no. Tubercular infection? no. Alcoholism? no. Any infectious disease? no. Occupational disease? no. Neurasthenia? no. Hypochondriasis? no. Hysteria? no. Exaggeration? No. Is there evidence of malingering? No.

15. For what period, from the date of accident, is disability likely to exist. 7 weeks. — days.

16. State, in patient's own words, how accident occurred. A revolving emery wheel broke and struck him in the face.

17. Remarks. Very serious injury. Under Dr. F. Flaherty's care.

R. L. SULLIVAN,
Attending Physician, Baldwinsville.
(Address.)

Graduate of Syracuse, Year 1900.
Date, Baldwinsville, N. Y., 1917.

9 *Employee's Claim for Compensation.*

(See Note on Margin Hereof.)

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

Syracuse Office: 428 South Salina Stree

Division of Claims.

Claim No. —. S.

Case of —— ——.

Having first presented a claim to my employer and not having within ten days thereafter reached an agreement with him for payment of compensation, I hereby present my claim to the State Industrial Commission for compensation for disability resulting from an accident arising out of and in the course of my employment and not occasioned by my wilful intention or solely through intoxication, and in support of it I make the following statement of facts:

Name of injured person. George Sweeting, Jr.

Address (Street and number) 14 River St., Baldwinsville, N. Y. (City or village and county) Onondaga Co.

Sex, male. Age 34. Nationality, American. Speak English? Yes. Married? Yes.

Date of accident. December 21st, 1917. Hour of day, 2:10 P. M.

On what date were you compelled to stop work as result of this injury? December 21st, 1917.

Exact location of place where accident happened? American Knife Works, Baldwinsville.

10 Was it at the plant or away from it? At the plant.

State occupation when injured. (Polisher) Burring slots.

How long have you worked at this occupation? Seven months.

How long have you worked for present employer? Eight years.

Were you doing your regular work when injured? Yes.

Piece or time worker? Both. Wages per full day? $2.50 and $3.25.

How did accident happen? I was working on emery wheel burring slots on planing knives at American Knife Works, Emery wheel broke, a piece of the emery wheel struck me in face on nose between eyes.

State fully nature of injury. Split entire length of nose, injured jaw bone, loosened teeth, injured head, smashed nose, disfigured nose and face.

Name of employer. American Knife Company, Inc.

Office address (Street and number) (City or village and county) Baldwinsville, N. Y.

Nature of business. Mfg. knives, cleavers, etc.

Have you returned to work? No.

If so, when? —.

If not, when will you be able to return? About April first estimated.

11 Have you received any wages (this does not mean compensation) since the date of your accident? No.

If you have been paid your wages, to what date? —.

Will you be able to take up regular employment when you return to work? No.

If not, why not? Poor eyesight.

Name of attending physician? Dr. R. L. Sullivan.

Address. Baldwinsville, N. Y.

If taken to hospital, give name and address of hospital and date. St. Joseph's Hospital at Syracuse, N. Y., Dec. 21, 1917.

Did you request your employer to provide medical attendance? No. Has he done so? Yes.

(Printed on margin:)

This form must not be used unless employer and employee fail to reach an agreement for compensation.

I hereby agree to accept the compensation awarded by the State Industrial Commission in lieu of any other right or cause of action which I may have or claim against any person, firm, or corporation, in consequence of such accident; and, in consideration of such compensation, if any, when awarded, I hereby assign and set over unto the State Industrial Commission, for the benefit of the State Insurance

Fund, if compensation be payable therefrom and otherwise to
12 the person or association or corporation liable for the payment of such compensation, all my right, title, and interest, if any, in such cause of action for such injury, loss, or damage against any person, firm, or corporation.

Signed, this 6th day of February, 1918, at Baldwinsville, N. Y.

—— ——,
(Claimant sign full name here.)
14 *River Street, Baldwinsville, N. Y.*
(Address to which mail should be sent.)

STATE OF NEW YORK,
County of Onondaga, ss:

On this 6th day of February, 1918, personally appeared before the undersigned, a Notary Public in and for the said County and State, the above named George Sweeting, Jr., to me well known, and to whom I have read the foregoing questions and answers, and all the matter above stated, and who, after being fully advised in the premises, subscribed his name thereto in my presence, and made oath that the foregoing statements, and each of them, are full and true, and are made without reservation or concealment.

(Signed) GEORGE SWEETING, JR.,
[SEAL.] *Post-office Address, Baldwinsville, N. Y.*

13 *Notice of Award.*

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

Syracuse Office: 428 South Salina Street.

Claim No. 2407-S.

Date, 2/28/18.

To American Knife Works, Employer, Baldwinsvile, N. Y., and Geo. Sweeting, Employee, No. 14 River St., Baldwinsville, N. Y., and Ætna Life Insurance Company, Insurance Carrier, Union Bldg., Syracuse, N. Y.:

You are hereby notified that at a meeting of the State Industrial Commission held February 26, 1918, a decision and award of compensation was made in the above matter, as follows: $1— for — weeks' disability at $— per week (this does — include first two weeks for which compensation is payable only in cases in which disabiilty has lasted more than forty-nine days), and the case was deferred until March 5, 1918, $— per week for a period of — weeks, beginning —— —, 191–.

The employer is hereby directed, in accordance with the provisions

of the Workmens' Compensation Law, to pay the above award to the employee in the following manner:

14 $— at once for a period (from —— —, 191–, to —— —, 191–) and the balance (if any) periodically, in accordance with the method of payment of wages of the employee at the time of injury.

The above copy of the decision and award is sent to you pursuant to sections 20 and 23 of the Compensation Law.

STATE INDUSTRIAL COMMISSION.
JOHN MITCHELL, *Chairman.*

Attest:
WILLIAM S. COFFEY, *Secretary,*
By A. I. SMITH,
Chief of Claims.

L. R.

NOTE.—Correspondence should be addressed to 428 South Salina Salina Street, Syracuse, N. Y.

To the claimant:

Call at the office of the insurance carrier given above, to collect the amount of award.

15 *Agreement of Employer and Employee as to Wage.*

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

Syracuse Office: 230 5th Avenue.

Division of Claims.

Claim No. 2407 N. Y.

Case of Geo. Sweeting, Jr.

State Industrial Commission, 230 5th Ave., New York.

We hereby certify that Geo. Sweeting injured while in our employ, on or about the 21st day of December, 1917, had been engaged in the same or similar employment for a period of six months and that his average daily wages during the year immediately preceding the date of his aforesaid injury was at the rate of $2.75.

Employer, AMERICAN KNIFE CO.,
Address, *Baldwinsville, N. Y.*

Certificate of Injured Employee.

I, George Sweeting, Jr., injured as aforesaid, while in the employ of above-named employer do hereby certify that the foregoing statement as to my average daily wages is correct.

Injured Employee, GEORGE SWEETING, Jr.,
Street and No., 14 *River St.*,
City or Village, *Baldwinsville, N. Y.*

16 *Notice of Award.*

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

Syracuse Office: 428 South Salina Street.

Claim No. 2407-S.

Date, 3/11/18.

Note.—Carrier to determine whether willing to pay for X-ray photograph showing extent of disability. Dentist's bill will be considered later.

To American Knife Works, Employer, Baldwinsville, N. Y., and Mr. Geo. Sweeting, Employee, No. 14 River St., Baldwinsville, N. Y., and Ætna Life Insurance Company, Insurance Carrier, Union Bldg., Syracuse, N. Y.:

You are hereby notified that at a meeting of the State Industrial Commission held 3/5/18 a decision and award of compensation was made in the above matter, as follows: $95.22 for 9 weeks' disability at $10.58 per week (this does not include first two weeks for which compensation is payable only in cases in which disability has lasted more than forty-nine days), and the case was continued, $— per week for a period of — weeks, beginning —— —, 191–.

17 The employer is hereby directed, in accordance with the provisions of the Workmen's Compensation Law, to pay the above award to the employee in the following manner:

$95.22 at once for period (from 12/21/17 to 2/22/18) and the balance (if any) periodically, in accordance with the method of payment of wages of the employee at the time of injury.

The above copy of the decision and award is sent to you pursuant to sections 20 and 23 of the Compensation Law.

STATE INDUSTRIAL COMMISSION.
JOHN MITCHELL, *Chairman.*

Attest:
WILLIAM S. COFFEY, *Secretary,*
By A. I. SMITH,
Chief of Claims.
L. R.

NOTE.—Correspondence should be addressed to 428 South Salina Street, Syracuse, N. Y.

To the claimant:

Call at the office of the insurance carrier given above, to collect the amount of award.

18 *Attending Physician's Report.*

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. —.

Case of —— ——.

All questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill out blank in ink, using pen or typewriter, and mail promptly to the Commission at its New York Office.

1. Name of injured person, George Sweeting, Jr. Address Baldwinsville, N. Y.

2. Date of accident, Dec. 21, 1917, at 2:10 P. M. Was first treatment rendered by you? Yes, Dec. 21, 1917.

3. If not, by whom? —. Address —.

4. If an assistant, consultant or anæsthetist was necessary, give name and address. Sent to hospital.

5. Who furnished necessary medical supplies? Employer. Was a nurse ordered by you? —.

6. Name of nurse —. Address —.

7. Was injured person removed to hospital? Yes. Name of hospital. St. Joseph's. Address Syracuse, N. Y.

8. Give an accurate description of the nature and extent of
19 the injury. A deep cut on left side of upper lip almost completely severing lip, left side of nose cut through to the floor. Septum cut through and right side of nose cut, an extension of the cut from the left side.

9. Describe the treatment. Treatment: Silver forms put in the nares and tissues replaced and satured.

10. Are the symptoms from which he is suffering due entirely to this injury? Yes.

11. Is he able to attend to any part of present or any other occupation? No.

12. Has the injury resulted in a permanent disability? Yes. If so, what? Bad disfigurement of upper lip and nose. (Permanent

disability, such as loss of whole or parts of fingers, etc., must be accurately marked on diagram.)

13. Has previous sickness or injury contributed to his disability? No. If so, to what extent? —.

14. Is there evidence of syphilis? —. Tubercular infection? —. Alcoholism? —. Any infectious disease? —. Occupational disease? —. Neurasthenia? —. Hypochondriasis? —. Hysteria? —. Exaggeration? —. Is there evidence of maligning? —.

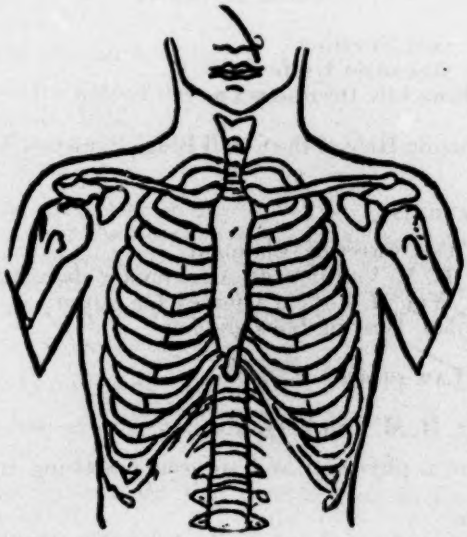
15. For what period, from the date of accident, is disability likely to exist? From surgical viewpoint 6 to 8 weeks, from vocational 6 weeks. — days.

16. State, in patient's own words, how accident occurred. An emery wheel on *wheel* he was working broke and flew and struck him on the face.

17. Remarks. —.

R. L. SULLIVAN,
Attending Physician.

Graduate of Syracuse, Year 1900.
Date Baldwinsville, N. Y., Dec. 27, N. Y., 1917.
Address Baldwinsville, N. Y.
Name of Employer —— ——.



Deep cut on upper left fracture of septum and cut across bridge of nose.

21 *Hearing of March* 27, 1918.

Claim No. 2407—Geo. Sweeting.

Special Hearing Held at the Cahill Bldg., Syracuse, N. Y., March, 27, 1918.

Present:

Commissioner James M. Lynch.
Commissioner Louis Wiard.
Deputy Commissioner W. C. Richards.
Mr. Geo. Sweeting, Claimant.
Mr. H. M. Van Bergen, Attorney for claimant.
Mr. C. H. Goebel, Attorney for carrier.

Adjourned. To be taken up again after decision from Court of Appeals in the case of Erickson vs. Preuss.

Hearing of May 23, 1918.

Before Commissioner James M. Lynch.

Claim No. 2407.

Employee: Geo. Sweeting.
Employer: American Knife Co.
Carrier: Ætna Life Insurance Co.

Special Hearing Held at the Cahill Bldg., Syracuse, N. Y., May 23, 1918.

Appearances:

Mr. Geo. Sweeting, Claimant.
22 Mr. H. M. Van Bergen, Attorney for claimant.
Mr. Wm. H. Foster, Attorney for carrier.
M. F. Quinlan, Hearing Stenographer.

Dr. W. F. Law sworn.

By Mr. H. M. Van Bergen:

Q. You are a physician and surgeon practicing in the City of Syracuse?
A. Yes, sir.
Q. You act as one of the medical advisers for the State Industrial Commission at Syracuse?
A. I do.
Q. You have been called in this morning to see George Sweeting?
A. Yes, sir.

Q. You examined him in regard to his facial disfigurement?
A. Yes, sir.
Q. Will you go ahead and describe his appearance, or the injuries from which he is suffering at the present time and his appearance to you?

A. Mr. Sweeting received a fracture of both nasal bones destroying the bridge of the nose and giving him what is commonly called a flat nose. There is a multiple scar extending longitudinally and transversely over the entire nose. There is a scar extending from the left angle of the nose down to the mouth near the medium line of the mouth. There is another small scar extending from the left angle of the nose obliquely toward the left cheeck.

Q. Describe a little more fully the result of the breaking of the nose. You have described him as having a flat nose. Can
23 you say to what extent the bridge has been broken and flattened down?

A. I think the description I have given of a flat nose describes it fully.
Q. That includes breaking what is commonly known as the bridge—flattened down?
A. The bridge is destroyed. He has what is called flattened nose.
Q. You have never seen this case or had anything to do with it until this morning?
A. No.
Q. These scars are permanent?
A. Yes, sir.

By Commissioner Lynch:

Q. What was the date of the accident?
A. December 21, 1917.

By Mr. Foster:

Q. Will those scars clear up any?
A. The scars over the nose—over the entire length of the nose—will always be permanent. This scar below the nose extending to the lip will be permanent. The little scar extending from the left angle of the nose obliquely to the left cheek may disappear after several years.

By Mr. Van Bergen:

Q. The flat nose effect is permanent?
A. Permanent.

Commissioner Lynch: Mr. Van Bergen, what do you think your client ought to have?

Mr. Van Bergen: I think he ought to have between $2,500 and $3,000. That is, $2,500 is the minimum and $3,000 the maximum.

24 Mr. GEORGE SWEETING, Claimant, sworn.

By Mr. Van Bergen:

Q. You are the claimant in this case?
A. Yes, sir.
Q. You were injured while working on the 21st of December, 1917?
A. I was.
Q. I show you "Exhibit 1" for identification. Is that a picture of yourself?
A. Yes, sir.
Q. When was that taken?
A. Two years before the accident.
Q. Is that a correct likeness of your appearance at that time?
A. Yes, sir.
Q. At one time prior to this accident did you have a fire and burn out?
A. I did.
Q. All pictures of yourself were destroyed at that time?
A. All that I had in my possession.
Q. This you borrowed from somebody else?
A. From my wife's sister.
Q. This is the only picture you have been able to obtain that was taken prior to the accident?
A. Yes.

By Mr. Foster:

Q. I show you "Exhibit 1." Who took that?
A. That was taken in Weedsport.
Q. What was the photographer's name?
A. That I could not tell.
Q. About what year was it taken?
A. Along 1915 or 1916.
Q. How old were you when that photograph was taken?
A. Along about 32.

25 By Mr. Van Bergen:

Q. I show you "Exhibit 2" and "Exhibit 3" for identification. Are these photographs of yourself taken on the same day?
A. They were both taken the same day, yes.
Q. Since the accident?
A. Yes.
Q. Sometime along in February or March of this year?
A. I think it was in February.
Q. Do these pictures accurately represent your appearance at that time?
A. Yes, sir.
Q. Do you recall who took these pictures?

A. A man by the name of Smith in Baldwinsville.
Q. They were taken in Baldwinsville?
A. Yes.
Q. How old are you?
A. 35.
Q. Where were you born and brought up?
A. I was born in Baldwinsville and have lived there most of my entire life.
Q. For about eight or nine years prior to your injury where had you been employed off and on?
A. American Knife Co.
Q. As machine operator?
A. Part of the time—practically most of the time.

By Commissioner Lynch:

Q. What is the business of this company?
A. Making plain knives, machine knives, meat cleavers, paper knives, etc.

By Mr. Van Bergen:

Q. In the manufacturing of their products, they have considerable machinery?
A. Mostly grinders.
26 Q. At the time you were injured, you were operating an emery wheel?
A. I was.
Q. After this injury, were you incapacitated for several weeks?
A. 12 weeks and 4 days.
Q. As soon as you were able, you went back to work?
A. I did.
Q. Your compensation for your disability has ceased and the case has been closed?
A. Yes, sir.
Q. At the present time or when you went back to work, what did you do?
A. I went to Mr. Toohey and he did not want me.
Q. He was the manager of the American Knife Co.?
A. Yes.
Q. Then you went to work for the Government?
A. I did.
Q. In connection with the making of barges at Baldwinsville?
A. Yes, sir.
Q. Since that time, you have worked for the Government?
A. Yes, sir.
Q. In what capacity?
A. Laboring man at first.
Q. What are you doing now?
A. Firing stationary boilers.
Q. You regard this employment as temporary, I assume?
A. It is not my line of business.

Q. This, in a way, is work connected indirectly with the war?
A. Yes.
Q. Are you a married man?
A. Yes.
Q. How many years have you been married?
A. Fourteen years the 17th of last March.
27 Q. How many children have you?
A. Five. Two girls and three boys.
Q. How old is the oldest?
A. 11 the 21st of September.
Q. She is the oldest?
A. Yes.
Q. You and your wife and children attend church at Baldwinsville?
A. Yes, sir.
Q. You and your wife are members of a church up there?
A. Yes, sir.
Q. The children go to Sunday school?
A. Yes, sir.
Q. You and your wife have a circle of friends in Baldwinsville?
A. We have.
Q. You associate with those friends and acquaintances?
A. We do.
Q. It is your custom to mingle with the people of Baldwinsville?
A. Yes, sir.
Q. Attend public functions at various times?
A. Yes, sir.
Q. The usual church gatherings—the usual activities connected with the church?
A. Yes, sir.
Q. Other meetings and gatherings which may be called in Baldwinsville?
A. I do.
Q. I suppose wherever you can go?
A. Yes, sir.
Q. At various times, it has been your custom to visit back and forth with your friends and relatives?
A. Yes, sir.
Q. Prior to this injury, had you ever had any other injury?
A. Only to my finger.
28 Q. Had you ever had any facial or head injury of any kind?
A. No, sir.
Q. This is your wife here in court with you?
A. Yes, sir.
Q. You said Mr. Toohey did not want you to continue working for him?
A. I reported to him for work and he said they did not have any for me to do. I considered myself discharged.
Q. This government job that you are working on has recently been established in Baldwinsville?

A. Yes, sir.
Q. It is solely for the purpose of making barges for the new canal?
A. Lighters for the harbors.

By Mr. Foster:

Q. You and Mr. Toohey had some argument about your carelessness at your work?
A. No, sir.
Q. You had had several other accidents there in the shop?
A. Nothing more than when he first put me polishing I caught my finger.
Q. You had had other accidents?
A. Nothing more than emery flying in my eye.
Q. What did you do before you went there to work?
A. Worked at the Morris Machine Works.
Q. How long did you work there?
A. About a year.
Q. What did you do at the Morris Machine Works?
A. I run a drill, helper and so on.
Q. What were you in the American Knife Co.—helper?
A. I did all lines of the work.
29 Q. What did you do before you worked for the Morris Machine Works?
A. Farmed it.
Q. Whereabouts?
A. Around Baldwinsville.
Q. Do you own a farm?
A. No.
Q. Did you when you were farming?
A. No, sir. I worked a farm on shares one year.
Q. Do you own the house you live in in Baldwinsville?
A. I do.
Q. I understood you to say that you had been working for the cutlery company between eight and nine years?
A. That is off and on.
Q. As a matter of fact, you have not worked there steady during those nine years?
A. Up until I think it was April a year ago, I had been there three years steady—I think it was three or four years.
Q. What were your wages at the time of this accident? What were you getting a day?
A. I was working part of the time on piece work and part of the time on day work.
Q. What were you averaging a week?
A. That was according to the amount of piece work I did.
Q. According to the amount of work you did?
A. According to the piece work that I got. When I was working on piece work, I could average $3.25 a day; when I was working on day work I was getting $2.50 with ten cent bonus.

Q. What were you doing when you had this picture taken, "Exhibit 1"?
A. I was at Toohey's.
Q. You do not know the name of the photographer who
30 took it?
A. I was just up there on a visit and just stopped in. My wife had some taken at the same time.
Q. How large a place is Weedsport?
A. I could not tell you. It is not very large.
Q. Is there more than one photographer there?
A. I do not know.
Q. How far is it from Baldwinsville?
A. I do not know.
Q. Who took this last photograph?
A. Mr. Smith of Baldwinsville.
Q. When did you say they were taken?
A. Along the latter part of February or the fore part of March, I could not tell you just when.

By Mr. Van Bergen:

Q. It was just before we had the hearing here, I think?
A. We were in Weedsport on a visit and we just stopped in and had them taken, that is that "Exhibit 1." My wife was with me.

By Mr. Foster:

Q. Is your mother living?
A. Yes, sir.
Q. Has she no photographs of you?
A. No, sir, she has not.
Q. Didn't you ever have any taken?
A. Only when I was small. They burned out about four years ago.
Q. Have you any brothers or sisters?
A. Yes.
Q. Have they any?
A. I do not know whether they have or not. They all live away from here quite a distance. It is not very often I get in touch with them.

31 By Mr. Van Bergen:

Q. Did you not at my request try to get any pictures you could around Baldwinsville?
A. My mother-in-law had one of the large size.

By Mr. Foster:

Q. Where is your mother-in-law?
A. She burned out since I did and lost everything she had.

By Mr. Van Bergen:

Q. I think you said you own your home there in Baldwinsville?
A. I do.

Mrs. GEORGE SWEETING sworn.

By Mr. Van Bergen:

Q. You live with your husband at Baldwinsville?
A. Yes, sir.
Q. You have a family of five children?
A. Yes.
Q. Were you with your husband when he had this picture, "Exhibit 1," taken?
A. Yes, sir.
Q. Do you recall the date and circumstances connected with it?
A. I do not remember just the day.
Q. I mean about going there?
A. Yes, sir. We were there on a visit to Weedsport. I said "Let's go in and have our pictures taken." He said, "All right." I have a small one of myself just the same.
32 Q. These pictures happened to be given to your sister?
A. Yes.
Q. Does this correctly represent his appearance at that time?
A. Yes.
Q. That was somewhere around two years ago?
A. Yes, it was.

By Mr. Foster:

Q. Do you remember the name of the photographer?
A. I do not. I did not take any notice.

By Mr. Van Bergen:

Q. Were you strangers in Weedsport at the time?
A. I did not know a great many there.
Q. Was the photographer a stranger to you?
A. Yes.
Q. Was there more than one photographer there?
A. That I do not know.

Commissioner Lynch: Mr. Foster, what would you consider?

Mr. Foster: If he is entitled to anything, he is entitled to some fairly substantial award. The disfigurement shows for itself. He does not look very attractive. There is no question about that.

Mr. Van Bergen: He got a very severe injury and it was only after several weeks that he was able to work. He has ulcers and discharge from the nose and all those complications which come from a nose injury but nothing which indisposes him from work but trouble him all the time. They ought to be considered in connection with his facial disfigurement.

Commissioner Lynch: The claimant is awarded $2,500 for
33 facial disfigurement in addition to compensation paid for disability. Carrier directed to pay this amount in one check and close the case.

Attorney Van Bergen's fee approved at $100 with the understanding that he is to take care of Dr. Law's fee.

Mr. Foster: The award of $2,500, in view of the claimant's station in life and the nature of his work, is excessive.

I object to making of any award on the ground that the amendment to subdivision 3 of section 15 by chapter 622 of the Laws of 1916 providing for serious facial disfigurement is unconstitutional in that it assesses damages without the right of a trial by jury in addition to proving compensation for disability.

2nd, it is unconstitutional in that it is contrary to the constitution of the United States and the constitution of the State of New York in that it takes property without due process of law.

3rd. The Compensation Law of New York State being a compulsory act, compensation cannot be awarded for disability and additional compensation for damages for disfigurement in violation of the constitution of the United States and the constitution of the State of New York.

4th. Chapter 622 of the Laws of 1916 added to section 15 of subdivision 3 of the Workmen's Compensation Law of the State of New York is unconstitutional and void.

34 *Stipulation.*

Supreme Court, Appellate Division, Third Department.

Before the State Industrial Commission.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent, for Compensation under the Workmen's Compensation Law,

VS.

AMERICAN KNIFE CO., Employer, and ÆTNA LIFE INSURANCE CO., Insurance Carrier, Defendants-Appellants.

It is hereby stipulated by and between the attorneys for the respective parties hereto that Exhibits 1 and 3 being photographs of the claimant, be omitted from the record herein, and that the originals thereof may be used at the argument of this case before the Appellate Division.

WILLIAM H. FOSTER,
Attorney for Defendant.
MERTON E. LEWIS,
Attorney-General, Attorney for State Industrial Commission.
ROBERT W. BONYNGE,
Counsel State Industrial Commission.

35 *Notice of Award.*

May 27, 1918.

Claim 2407—Geo. Sweeting.

Mr. George Sweeting, 14 River St., Baldwinsville, N. Y.; American Knife Co., Baldwinsville, N. Y., Ætna Life Ins. Co., Union Bldg., Syracuse, N. Y.:

On May 23, 1918, a special hearing of the above case was held at the Cahill Bldg., Syracuse, N. Y., before Commissioner James M. Lynch. There appeared at the hearing

Mr. Geo. Sweeting, Claimant.

Mr. H. M. Van Bergen, Attorney for claimant.

Mr. Wm. H. Foster, Attorney for carrier.

The question of facial disfigurement was taken up and considered. Claimant was awarded $2,500 for facial disfigurement. Carrier was directed to pay this amount in one check and close the case.

Attorney Van Bergen's fee was approved at $100 with the understanding that — is to take care of Dr. Law's bill.

This notice is sent you pursuant to sections 20 and 23 of the Compensation Law.

STATE INDUSTRIAL COMMISSION.
J. M. LYNCH, *Commissioner.*

J. M. L./M. F. Q.

36 *Conclusions of Fact, Ruling of Law, Award, and Decision.*

State Industrial Commission.

Claim No. 2407-S.

In the Matter of the Claim for Compensation, under the Workmen's Compensation Law, Made by GEORGE SWEETING, JR.

against

AMERICAN KNIFE CO., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier.

George Sweeting, Jr., sustained his injuries on December 21, 1917. Thereafter this claim came on for hearing at Syracuse, New York, on February 26, 1918, and March 5, 1918, on which latter date an award of compensation was made for 9 weeks covering period from December 21, 1917, to February 22, 1918. Thereafter, hearing was held on March 27, 1918, April 2, 1918, and May 23, 1918, on which latter date an award of compensation was made for $2,500.00 for serious facial disfigurement, at which time the attorney for the employer and insurance carrier raised the question of the constitutionality of sub-division 3 of section 15 under which said award was made.

37 Appearances:

Robert W. Bonynge, Esq., Counsel of State Industrial Commission.

William H. Foster, Esq., Attorney for Employer and Insurance Carrier.

Olmsted, Van Bergen & Searls, Esq., (H. M. Van Bergen, Esq., of Counsel), Attorneys for Claimant.

All the evidence submitted before the Commission having been heard and duly considered, the Commission makes its Conclusions of Fact, Ruling of Law, Award and Decisions, as follows:

Conclusions of Fact.

1. On December 21, 1917, the day when George Sweeting, Jr., received his injuries, he resided at No. 14 River Street Baldwinsville, New York, and was employed by American Knife Company, engaged in the manufacture of machine knives, with a plant or place of business located at Baldwinsville, New York. George Sweeting, Jr., was employed at said plant in the grinding department operating an emery wheel.

2. On said date, George Sweeting, Jr., was working for his employer at his employer's plant, and while engaged in the regular course of his employment, while operating an emery wheel burring out a slot on a planing knife, the emery wheel exploded
38 and broken parts of said wheel flew into his face, splitting his nose the entire length thereof, injuring his jaw bone and loosening his teeth, which injuries disabled him from the date of said accident and for a period of 12 weeks and 4 days.

The injuries received by George Sweeting, Jr., on said date also resulted in a serious facial disfigurement. The nature of said disfigurement is described as a fracture of both nasal bones destroying the bridge of the nose, and giving him what is commonly called a flat nose; there is a multiple scar extending longitudinally and transversely over the entire nose; there is a scar extending from the left angle of the nose down to the mouth near the *medium* line of the mouth; there is another small scar extending from the left angle of the nose obliquely to the left cheek; the scars over the nose—over the entire length of the nose will be permanent, as well as the scar below the nose extending to the lip, while the little scar extending from the left angle of the nose obliquely to the left cheek may disappear after several years. The flat nose effect is permanent.

3. The injuries sustained by George Sweeting, Jr., were accidental injuries, and arose out of and in the course of his employment.

4. It does not appear whether written notice of injury was
39 given to the employer within ten days after disability, but it has not been established as a fact that such written notice was not given, and it is therefore presumed under section 21 of the Compensation Law that sufficient notice was given.

Ruling of Law.

This claim comes within the provisions of Chapter 67 of the Consolidated Laws, being Chapter 816 of the Laws of 1913, as reenacted and amended by Chapter 41 of the Laws of 1914, and amended by Chapter 316 of the Laws of 1914, and as further amended by the Laws of 1915, 1916 and 1917, known as the Workmen's Compensation Law.

Award.

Award of Compensation is made against the American Knife Co., Employer, and Ætna Life Insurance Company, Insurance Carrier, to George Sweeting, Jr., Injured Employee, in the sum of $2,500.00 on account of and in view of the serious facial disfigurement resulting from the injuries sustained on December 21, 1917; the fee of H. M. Van Bergen, Esq., is approved at the sum of $100.00 with the understanding that he is to pay the bill of Dr. Law, and such sum is made a lien upon this award.

40

Decision.

It is presumed under Section 21 of the Compensation Law, that sufficient notice of injury was given to the employer.

Dated, May 23, 1918.

STATE INDUSTRIAL COMMISSION.
EDW. P. LYON, *Vice-Chairman;*
HENRY D. SAYER,
JAMES M. LYNCH,
Commissioners.

41

Affidavit of No Opinion.

Supreme Court, Appellate Division, Third Department.

Before State Industrial Commission.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent, for Compensation under the Workmen's Compensation Law,

against

AMERICAN KNIFE CO., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

STATE OF NEW YORK,
County of Onondaga, City of Syracuse, ss:

Charles H. Goebel being duly sworn deposes and says that he is a clerk in the law office of William H. Foster attorney for the defendants-appellants herein and is familiar with this file; that no

opinion was rendered by the State Industrial Commission in making the award for compensation herein.

CHARLES H. GOEBEL.

Sworn to before me this 3rd day of Sept., 1918.

F. I. OLMSTED,
Notary Public.

42 *Certification of Record.*

I, William S. Coffey, Secretary of the State Industrial Commission, do hereby certify that I have compared the foregoing papers, except the statement under rule 41, with the respective originals thereof on file in the office of the State Industrial Commission, and that the same are true and correct copies of said originals and of the whole thereof, and that said papers constituted all of the papers and proceedings herein, including the evidence which were before said State Industrial Commission in relation to the foregoing claim.

In witness whereof I have hereunto set my hand and the official seal of the State Industrial Commission on the 3rd day of Sept. 1918.

W. S. COFFEY,
Secretary State Industrial Commission.

43 *Order Settling Case.*

It is hereby ordered that the foregoing case, which contains all the evidence introduced at the hearing of this claim except that stipulated by the parties to be omitted, be and the same hereby is settled as the case herein.

Dated New York, Sept. 3, 1918.

EDWARD P. LYON,
Vice-Chairman State Industrial Commission.

44 *Order of Affirmance.*

At a Term of the Appellate Division of the Suprme Court in and for the Third Department, Held at the Court-house, in the City of Albany, N. Y., Commencing on the 12th Day of November, 1918.

Present: Hon. John M. Kellogg, Presiding Justice;
" George F. Lyon,
" John Woodward,
" A. V. S. Cochrane,
" Henry T. Kellogg,
Associate Justices.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent, for Compensation under the Workmen's Compensation Law,

against

AMERICAN KNIFE CO., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

The above-named American Knife Co. and Ætna Life Insurance Company having appealed from the award of the State Industrial Commission entered in the office of said Commission on the 23rd day of May, 1918, whereby compensation was awarded to the above-named George Sweeting, Jr., injured employee, in the sum
45 of $2,500.00 on account of and in view of the serious facial disfigurement resulting from the injuries sustained on December 21, 1917; the fee of H. M. Van Bergen, Esq., is approved at the sum of $100.00 with the understanding that he is to pay the bill of Dr. Law, and such sum is made a lien upon this award; and said appeal having come on to be heard in this court, and having been argued by William H. Foster, Esq., of counsel for the appellants, and E. C. Aiken, Deputy Attorney General, for the State Industrial Commission, and due deliberation having been had thereon,

Now, on motion of Merton E. Lewis, Attorney General, attorney for the State Industrial Commission, it is

Ordered that said award of the State Industrial Commission appealed from be and the same is hereby unanimously affirmed.

JOSEPH H. HOLLANDS, *Clerk.*

A copy.

[L. S.] JOSEPH H. HOLLANDS, *Clerk.*

46 *Order of Commission.*

Before the State Industrial Commission.

In the Matter of the Claim of GEORGE SWEETING for Compensation under the Workmen's Compensation Law

against

AMERICAN KNIFE CO., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier.

The above named American Knife Co., employer, and Ætna Life Insurance Company, insurance carrier, having appealed to the Appellate Division of the Supreme Court in and for the Third Judicial Department, from the award and decision of the State Industrial Commission, made and entered herein on the 23rd day of May, 1918, whereby compensation was awarded the above named George Sweeting in the sum of $2,500.00 on account of and in view of the serious facial disfigurement resulting from injuries sustained on December

21, 1917; the fee of Mr. Van Bergen is approved in the sum of $100.00, with the understanding he is to pay the bill of Dr. Law, and such sum is made a lien upon this award; and said appeal having been duly heard by said Court, and the Appellate Division of the Supreme Court having at a term thereof commencing on the 12th day of November, 1918, unanimously affirmed the award and de-
47 cision heretofore made by the State Industrial Commission, and the papers on appeal herein together with a certified copy of the said order of the Appellate Division having been duly filed; it is

Ordered, that the order of the Appellate Division be and the same hereby is made the order of the State Industrial Commission, and the award heretofore made herein be and the same hereby is affirmed with interest from May 23, 1918.

Dated: New York, Dec. 9, 1918.

W. S. COFFEY, *Secretary.*

Notice of Appeal.

Court of Appeals, State of New York.

Before State Industrial Commission.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

VS.

AMERICAN KNIFE CO., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

SIRS: Please Take Notice that the American Knife Com-
48 pany, Employer, and the Ætna Life Insurance Company, Insurance Carrier, hereby appeal to the Court of Appeals from the judgment and order of affirmance in the Supreme Court, Appellate Division, Third Department, entered in the office of the clerk of the Appellate Division, Third Department, on the 25th day of November, 1918, and also from the order of the State Industrial Commission, making the order of the Appellate Division the order of the State Industrial Commission, dated December 9, 1918, and from each and every part of said orders.

Dated, Syracuse, N. Y., December 16, 1918.

WILLIAM H. FOSTER,
Attorney for Appellants.

Office and Post Office Address, Union Building, Syracuse, N. Y.

To R. M. Barber, Clerk of the Court of Appeals, Albany, N. Y.; Joseph H. Hollands, Clerk Supreme Court, Appellate Division, Third Department, Albany, N. Y.; Hon. Merton E. Lewis, Attorney General, The Capitol, Albany, N. Y.; Robert W. Bonynge, Counsel State Industrial Commission, 230 Fifth Ave., New York City; George Sweeting, Claimant, 14 River Street, Baldwinsville, N. Y.

49 *Affidavit of No Opinion.*

Court of Appeals, State of New York.

Before State Industrial Commission.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent, for Compensation under the Workmen's Compensation Law

against

AMERICAN KNIFE COMPANY, Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

STATE OF NEW YORK,
County of Onondaga, City of Syracuse, ss:

Charles H. Goebel, being duly sworn, deposes and says that he is a clerk in the law office of William H. Foster, attorney for the defendants-appellants herein, and is familiar with this file, that no opinion was rendered by the Appellate Division in affirming the award of compensation herein.

CHARLES H. GOEBEL.

Sworn to before me this — day of December, 1918.

F. I. OLMSTEAD,
Notary Public.

50 *Certificate of Record.*

I, William S. Coffey, Secretary of the State Industrial Commission, do hereby certify that I have compared the foregoing papers, except the statement under Rule 41, with the respective originals thereof *in* file in the office of the State Industrial Commission, and that the same are true and correct copies of said originals and of the whole thereof, and that said papers constituted all of the papers and proceedings herein, including the evidence, which were before said State Industrial Commission in relation to the foregoing claim.

In witness whereof I have hereunto set my hand and the official seal of the State Industrial Commission on the — day of December, 1918.

W. S. COFFEY,
Secretary State Industrial Commission.

Order Settling Case.

It is hereby ordered that the foregoing case which contains all the evidence introduced at the hearing of this claim, except that stipu-

lated by the parties to be omitted, be and the same hereby is settled as the case herein.

Dated, New York, December —, 1918.

EDWARD P. LYON,
Vice Chairman State Industrial Commission.

51 STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the Court of Appeals, Held at Court of Appeals Hall, in the City of Albany, on the 8th Day of April, in the Year of Our Lord One Thousand Nine Hundred and Nineteen, Before the Judges of said Court.

Witness, The Hon. Frank H. Hiscock, Chief Judge, presiding.
R. M. BARBER, *Clerk.*

Remittitur, April 9th, 1919.

In the Matter of the Claim of GEORGE SWEETING for Compensation, &c.

Be it remembered, That on the 28th day of December, in the year of our Lord one thousand nine hundred and eighteen, American Knife Company, Employer, & ano., the appellants in this cause, came here into the Court of Appeals, by William H. Foster, their attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment and order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And State Industrial Commission, the respondent in said cause, afterwards appeared in said Court of Appeals by Merton E. Lewis, Attorney General.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

52 Whereupon, The said Court of Appeals having heard this cause argued by Mr. William H. Foster, of counsel for the appellants, and by Mr. E. C. Aiken, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be, and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed, with costs &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division, Third Judicial Department, before the Jus-

tices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division before the Justices thereof, &c.

R. M. BARBER,
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office.

Albany, April 9, 1919.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL.] R. M. BARBER, *Clerk.*

53 At a Term of the Appellate Division of the Supreme Court in and for the Third Judicial Department, Held at the Court-house, in the City of Albany, N. Y., Commencing on the 6th Day of May, 1919.

Present: Hon. John M. Kellogg, Presiding Justice; Hon. George F. Lyon, Hon. John Woodward, Hon. A. V. S. Cochrane, Hon. Henry T. Kellogg, Associate Justices.

In the Matter of the Claim of GEORGE SWEETING for Compensation under the Workmen's Compensation Law

against

AMERICAN KNIFE CO., Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Appellants.

The above named American Knife Co., and Ætna Life Insurance Company having appealed from the order of the Appellate Division of the Supreme Court, in and for the Third Judicial Department, made at a Term commencing on the 12th day of November, 1918, which affirmed an award of the State Industrial Commission entered in the office of said Commission on the 23rd day of May, 1918, whereby compensation was awarded to the above named George Sweeting, Jr., injured employee, in the sum of $2,500.00 on account of and in view of the serious facial disfigurement resulting from the injuries sustained on December 21, 1917, against which award for facial and head disfigurement appellants, when this cause was before this Court, contended that to make said award would be tantamount to making an award, not for loss of earning power, but for damages, and would, therefore, take the property of appellants without
54 due process of law, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States; the fee of H. M. Van Bergen, Esq., is approved at the sum of $100.00 with the understanding that he is to pay the bill of Dr. Law, and such sum is made a lien upon this award; and said appeal

having been argued in the Court of Appeals by William H. Foster, Esq., of counsel for the appellants, and E. C. Aiken, Deputy Attorney General, for the State Industrial Commission, and the Court of Appeals after due deliberation had thereon did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from be affirmed with costs; and further ordered that the record and proceedings be remitted to the Appellate Division of the Supreme Court, Third Judicial Department, there to be proceeded upon according to law; and the said remittitur having been filed in this Court.

Now, on motion of Charles D. Newton, Attorney General, Attorney for the State Industrial Commission, it is

Ordered that the order and judgment of the Court of Appeals be and the same is hereby made the order of this Court, and that the award or decision of the State Industrial Commission entered on the 23rd day of May, 1918, be and the same is hereby in all respects affirmed with $90.50 costs to be paid by the appellants.

JOSEPH H. HOLLANDS, *Clerk.*

55 In the Court of Appeals of the State of New York.

In the Matter of the Claim of GEORGE SWEETING, Respondent, for Compensation under the Workmen's Compensation Law

against

AMERICAN KNIFE CO. et al., Appellants; STATE INDUSTRIAL COMMISSION, Respondent.

(Decided April 8, 1919.)

Appeal from an Order of the Appellate Division of the Supreme Court for the Third Department Affirming an Award of the State Industrial Commission.

Wm. H. Foster for appellants.

Charles D. Newton, Attorney-General (E. C. Aiken of counsel), for respondent.

CARDOZO, *J.:*

The claimant was employed in the grinding department of the American Knife Company. The explosion of an emery wheel destroyed the bridge of his nose, giving him what is commonly called a flat nose, with deep scars upon his face. The state industrial commission made an award of $2,500 for serious facial disfigurement. Subdivision 3 of section 15 of the Workmen's Compensation Law (Cons. Laws, chap. 67) (as amended in 1916) provides that "in case of an injury resulting in serious facial or head disfigurement the commission may in its discretion, make such award or compensation as it may deem proper and equitable, in view of the nature of

the disfigurement, but not to exceed $3,500." The employer and the insurance carrier insist that this provision of the statute is unconstitutional and void.

The argument is that the purpose of the amendment is to compensate the workman for injuries that have no relation to his earning power. If that were in truth the purpose, the statute would still be valid (Matter of Erickson v. Preuss, 223 N. Y. 365). The Constitution (Art 1, section 19) authorizes the adoption of a system of insurance to compensate employees for injuries without regard to
56 fault. Insurance against pain of mind and body is as legitimate, if the amount is kept within the bounds of moderation, as insurance against loss of earnings. It is of no moment that some other measure of compensation may have prevailed in the past. The Constitution does not stereotype the forms of legislation. The common law gave the workman compensation for pain and suffering, as well as for loss of earnings, when the employer was at fault. The statute takes that remedy away, and substitutes insurance within prescribed limits, irrespective of fault. Pain and suffering are part of the risks of the employment. The legislature may make them part of the risks of the insurance. The one restriction on its power is that the burden must be reasonable. (Mountain Timber Co. v. Washington, 243 U. S. 219, 240, 241; N. Y. Central R. R. Co. v. White, 243 U. S. 188, 207.)

The statute would stand, therefore, though facial disfigurement were unrelated to loss of earnings. But in truth it is related, and so the legislature must have found. One cannot defeat a statute by a presumption that in its enactment the truths of life have been ignored. The presumption is, on the contrary, that they have been perceived and heeded. But one of the truths of life is that serious facial disfigurement has a tendency to impair the earning power of its victims. In some callings it would rule out altogether an applicant for employment. In most it would put him at a disadvantage when placed in competition with others. There may, of course, be individual instances of disfigurement without impairment of earning power. That is true also where there has been the loss of a finger or a foot or an eye. Lawmakers framing legislation must deal with general tendencies. The average and not the exceptional case determines the fitness of the remedy.

57 The argument is made, however, that the findings are defective. If the purpose of the statute is to compensate for loss of earnings, there should be a finding, it is said, that the result of the claimant's disfigurement will be diminished earning power. One might as well argue that without a like finding there could be no recovery for the loss of a finger or a foot or an eye. The commission has found that there has been serious facial disfigurement, and that an award of $2,500 is fair and equitable. Those are the ultimate facts to be embodied in the decision. The capacities and opportunities of the individual claimant have at the utmost an evidential value. It is true that the commission has a wide discretion, and in fixing a fair and equitable compensation it may inquire into

all the circumstances that will help to guide its judgment. But those circumstances, however pertinent as evidence, have no place in the findings. The mutilated face, like the mutilated arm or leg, is the capital fact upon which liability depends. The injury alone, without other proof of loss, makes out the claimant's handicap in the struggle of existence. Given the fact of injury, the commission is to assess the damages. The presumption is that all relevant circumstances have been weighed in the assessment. These findings, therefore, would be adequate even if the commission were a court. But in truth it is not a court, and the niceties of code practice have no place in its procedure. Its decision states the facts essential to liability. No more should be exacted.

There is nothing in the point that the extent of compensation must be determined by a jury. The Constitution authorizes "the adjustment, determination and settlement, with or without trial by jury, of issues which may arise under such legislation" (Constitu-
58 tion, art. 1, sec. 19). The award is not redress for a tort. It is an allotment to an insured workman of his proportion of a fund maintained for his insurance (Mountain Timber Co. v. Washington, supra, at p. 235). Nor does the statute become invalid because the commission has some discretion in fixing the amount. The legislature may provide for such a method of "adjustment, determination and settlement" as it will. There is reason for the distinction which it has drawn between facial disfigurement and other injuries, though the reason is hardly our concern. Some injuries, as for instance the loss of a limb, may be so defined and classified that the appropriate compensation may with a fair average of justice be estimated in advance. But cases of disfigurement have their special problems. It is difficult, if not impossible, to define and classify the injuries. A flexible compensation makes for justice alike to employer and to workman. It is not important that a lump payment is exacted. That may be done in other cases (Workmen's Compensation Law, sec. 27). The payment is not made by the employer himself, if he insures in the state fund, except to the extent of the premium which he pays for his insurance (Secs. 50, 53). It is a charge upon the fund. He may, of course, be a self-insurer, or pay his premiums to an insurance company (Sec. 50), but that is only at his option.

The statute is constitutional, and the proceedings under it have been regular.

The order should be affirmed with costs.

POUND, *J.* (concurring):

I concur in the result. The compensation awarded to the employee under the Workmen's Compensation Law is based on loss of earning power. An allowance for serious facial or head disfigure-
59 ment so far as such disfigurement has no relation to disability, is an anomaly. (Matter of Marhoffer v. Marhoffer, 220 N. Y. 543.) The language of the opinion in the Erickson Case (223 N. Y. 365-368), "The commission may now make an award

for serious facial or head disfigurement, *even though such disfigurement does not diminish or impair the earning capacity of the claimant,*" is unnecessarily broad and might have been limited to the language of the act itself, which does not include the words italicized.

Doubtless the general language of the New York Constitution (Art. 1, sec. 19) would permit us to uphold a statute which awards compensation to employees for all industrial injuries, without trial by jury, but the theory of the Compensation Acts is that the community rather than the injured workman should carry the burden of impaired earning capacity due to accident. If that theory is extended to cases where the injured man can still work and get work and an administrative board is permitted to assess the damages, a new problem is introduced as to the limits of legislative power (U. S. Const. Amend. 14) and the reasonableness of the burden, the solution of which is not so easy (N. Y. Central R. R. Co. v. White, 243 U. S. 188, 202, 203.)

Serious facial or head disfigurement may leave one able to work and unable to get work. Employers might refuse to employ a disfigured man in his trade either from lack of confidence in his unimpaired ability or because it would be unpleasant for others to work beside him or unprofitable to have him meet the customers. A woman whose hair had been torn off or whose face was badly scarred might be so repulsive to the eye that no one would employ her and yet be as competent as ever to do her work. In a lesser degree, the seriously disfigured face or head of a man might lead to discrimination against him. The House of Lords in Ball v. Hunt & Sons (1912 (A. C.) 496), upholding an award for such injuries, said: "The injury for which the statute gives compensation is not mutilation or disfigurement or loss of physical power, but loss or diminution of the capacity to earn wages." The New York statute, by mentioning facial injuries, merely makes plain what the English act leaves to interpretation. If this award for disfigurement is placed on the broad ground of impaired ability to get work, no violence is done to the purpose of the act. In the absence of a finding of fact negativing such impaired ability on the facts in this case, the award should be sustained. (W. C. L. §21). The order should be affirmed, with costs.

McLaughlin and Andrews, JJ., concur with Cardozo, J.; Hiscock, Ch. J., and Pound, J., concur in result in memorandum by Pound, J.; Chase and Hogan, JJ., vote to remit case to industrial commission for further hearing because of absence of findings showing that disfigurement has resulted in loss of earning power or of ability to obtain employment.

Order affirmed.

61 Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent,

against

AMERICAN KNIFE COMPANY, Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

It is hereby stipulated by and between the attorneys for the respective parties hereto, pursuant to Rule 8 of the Supreme Court of the United States, that the following portions of the record shall constitute the transcript of record on writ of error from the Supreme Court of the United States, and that the Clerk shall transmit to the Clerk of the Supreme Court of the United States only the papers herein designated as follows:

Statement under Rule 41.
Notice of Appeal to Appellate Division.
Employer's First Report of Injury.
Attending Physician's Report.
Employee's Claim for Compensation.
Notice of Award February 28, 1918.
Agreement as to Wage.
Notice of Award March 11, 1918.
Attending Physician's Report.
Hearing of March 27, 1918.
Hearing of May 23, 1918.
Testimony of Dr. W. F. Law.
Testimony of George Sweeting.
Testimony of Mrs. Sweeting.
62 Stipulation as to Photographs.
Notice of Award May 27, 1918.
Conclusions of Fact, Ruling of Law, Award and Decision.
Affidavit of No Opinion by Commission.
Certification of Record to Appellate Division.
Order Settling Case.
Order of Affirmance by Appellate Division.
Order of Commission thereon.
Notice of Appeal to Court of Appeals.
Affidavit of No Opinion in Appellate Division.
Certification of Record to Court of Appeals.
Order Settling Case.
Judgment of the Court of Appeals.
Order of Appellate Division Entered on Judgment of Court of Appeals.
Opinion of Judge Cardozo in the Court of Appeals.

Concurring Opinion of Judge Pound in the Court of Appeals. Dated, May 19th, 1919.

WILLIAM H. FOSTER,
Attorney for Appellants.
CHARLES D. NEWTON,
E. C. A.
Attorney General of the State of New York,
Attorney for Respondent.

63 [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Department. In the Matter of the Claim of George Sweeting, Claimant-Respondent, against American Knife Company, Employer, and Ætna Life Insurance Company, Insurance Carrier, Defendants-Appellants. Stipulation pursuant to Rule 8 of the U. S. Supreme Court. William H. Foster, Attorney for Appellants, Office and Post Office Address, Syracuse, N. Y.

64 Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent,

against

AMERICAN KNIFE COMPANY, Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

STATE OF NEW YORK,
Third Judicial Department, ss:

I, Joseph H. Hollands, Clerk of the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of George Sweeting, claimant-respondent, against American Knife Company, employer, and Ætna Life Insurance Company, insurance carrier, defendants-appellants, as set forth in the annexed stipulation bearing date May 19th, 1919, and made pursuant to Rule 8 of the Supreme Court of the United States between the attorneys for the respective parties hereto, and also of the opinions rendered in the Court of Appeals by Judge Cardozo and by Judge Pound herein, as the same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Albany, State of New York, this 19th day of May, 1919.

[Seal Supreme Court, Appellate Division, Third Department.]

JOSEPH H. HOLLANDS,
Clerk of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York.

65 [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Department. In the matter of the Claim of George Sweeting, Claimant-Respondent, against American Knife Company, Employer, and Ætna Life Insurance Company, Insurance Carrier, Defendants-Appellants. Authentication of Record. William H. Foster, Attorney for Appellants, Office and Post Office Address, Syracuse, N. Y.

66 Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent,

against

AMERICAN KNIFE COMPANY, Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

STATE OF NEW YORK,
Third Judicial Department, ss:

In obedience to the commands of the writ of error herein allowed May 14th, 1919, I herewith transmit to the Supreme Court of the United States a duly certified transcript of such portions of the record and proceedings in the above entitled cause as, in pursuance of Rule 8 of the Supreme Court of the United States, the attorneys for the respective parties hereto have by stipulation designated, with all things concerning the same.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Albany, State of New York, this 19th day of May, 1919.

[Seal Supreme Court, Appellate Division, Third Department.]

JOSEPH H. HOLLANDS,
Clerk of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York.

67 [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Department. In the matter of the Claim of George Sweeting, Claimant-Respondent, against American Knife Company, Employer, and Ætna Life Insurance Company, Insurance Carrier, Defendants-Appellants. Return to Writ of Error. William H. Foster, Attorney for Appellants, Office and Post Office Address, Syracuse, N. Y.

68 Supreme Court, Appellate Division, Third Department.

In the Matter of the Claim of GEORGE SWEETING, Claimant-Respondent,

against

AMERICAN KNIFE COMPANY, Employer, and ÆTNA LIFE INSURANCE COMPANY, Insurance Carrier, Defendants-Appellants.

STATE OF NEW YORK,
Third Judicial Department, ss:

I, Joseph H. Hollands, Clerk of the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, do hereby certify that there have been lodged with me, as such Clerk, this day, in the above entitled cause:

1. The original bond, of which a copy is hereto annexed;
2. Two copies of the writ of error as herein set forth, one for the defendant in error above and one to file in my office;
3. One copy of the prayer for reversal, petition and assignment of errors herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Albany, State of New York, this 19th day of May, 1919.

[Seal Supreme Court, Appellate Division, Third Department.]

JOSEPH H. HOLLANDS,
Clerk of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York.

69 Supreme Court of the United States.

AMERICAN KNIFE COMPANY and ÆTNA LIFE INSURANCE COMPANY, Plaintiff'-in-error,

against

GEORGE SWEETING, Defendant-in-error.

Know all men by these presents, that the Ætna Casualty and Surety Company of Hartford, Connecticut, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and having its principal business at Hartford, Connecticut, duly authorized to transact business in the State of New York, and having an office for that purpose in the City of Syracuse, N. Y., is held and firmly bound unto George Sweeting in the sum of Four Thousand Dollars ($4000.00) lawful money of the United States, to be paid to said George Sweeting, his executors, administrators and

assigns, for which payment well and truly to be made, the said Ætna Casualty and Surety Company of Hartford, Connecticut, binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the seal of the Ætna Casualty and Surety Company and dated this 29th day of Apr., 1919.

Now, whereas, the above named the American Knife Company, Employer, and the Ætna Life Insurance Company, Insurance Carrier, are prosecuting a writ of error to the Supreme Court of the United States to reverse the order of the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York entered on the 29th day of Apr., 1919, whereby a judgment of the Court of Appeals of the State of New York, rendered April 8th, 1919, was made the judgment of said Appellate Division, a reversal of which judgment is likewise sought,

Now, therefore, the condition of this obligation is such that if the above named American Knife Co., Inc., Employer, and Ætna Life Insurance Company, Insurance Carrier, shall prosecute their said writ to effect and, if they fail to make good their plea, shall answer all damages and costs, then this obligation shall be void, otherwise to remain in full force and virtue.

ÆTNA CASUALTY AND SURETY COMPANY OF HARTFORD, CONN.,
By B. E. WATSON,
Resident Vice-President. [L. S.]

Attest:
[L. S.] GEORGE J. KESEL,
Resident Assistant Secretary.

Approved this 14th day of May, 1919, to act as a supersedeas.
LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

70 STATE OF NEW YORK,
County of Onondaga, ss:

On this 29th day of April, 1919, before me personally came B. E. Watson, to me known, who, being by me duly sworn, did depose and say: That he resides in the City of Syracuse, New York; that he is Resident Vice-President of The Ætna Casualty and Surety Company, the corporation described in, and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; that he signed his name thereto by like order; that he is acquainted with George J. Kesel; that he knows him to be the Resident Ass't Secretary of said Company; that the signature of said George J. Kesel, subscribed to said instrument, is in the genuine handwriting of said George J. Kesel, and was thereto subscribed by like order of said

Board of Directors, and in the presence of him, the said B. E. Watson.

FRED I. OLMSTEAD,
Notary Public.

At a regular meeting of the Board of Directors of the Company, duly called and held on the 28th day of December, A. D. 1911, the following By-Law was adopted:

Article 8. Resident Officers, Attorney-in-Fact, and Agents.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney-in-Fact or Agent, and revoke the power and authority given him.

Section 2. Resident Vice-Presidents may, subject to the provisions and limits named in their certificate of authority, sign and execute on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the President or any other Officer could bind it; Such bonds and undertakings, however, to be attested in every instance by a duly appointed Resident Assistant Secretary.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other Officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

Section 4. Attorneys-in-Fact may, subject to the provisions and limits named in their certificate of authority, execute and deliver and attach the seal of the Company to any and all bonds and undertakings and other writings obligatory in the nature of a bond on behalf of the Company, and any such instrument executed by any such Attorney-in-Fact when attested by any other Attorney-in-Fact shall be as binding upon the Company as if signed, sealed, and attested by any Officer of the Company.

STATE OF CONNECTICUT,
County of Hartford, ss:

I, Norman C. Stevens, — of The Ætna Casualty and Surety Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of said Company, and do hereby

certify that the same is a true and correct transcript therefrom, and of the whole of said original By-Law.

Given under my hand and the seal of the Company, at Hartford, Conn., this 23rd day of September 1918.

[Seal the Ætna Casualty and Surety Company, Hartford, Conn.]

NORMAN C. STEVENS, *Secretary.*

71 The Ætna Casualty and Surety Company, Hartford, Connecticut.

ÆTNA.

Certificate of Authority of Resident Assistant Secretary.

Know all men by these presents that B. E. Watson has been and is hereby appointed Resident Assistant Secretary of The Ætna Casualty and Surety Company, of Hartford, Connecticut, at Syracuse, New York, and as such Resident Assistant Secretary has power and authority to affix the seal of the Company to, and attest on behalf of the Company, any and all bonds and undertakings, and all bonds and undertakings sealed and attested by him, when signed by a duly appointed Resident Vice-President, shall be as valid and binding upon the Company as if said bonds and undertakings had been sealed and attested by the Secretary.

This appointment is made under and by authority of the following By-Law adopted by the Board of Directors of the Company at a meeting duly called and held on the 28th day of December, 1911.

Article 8. Resident Officers, Attorneys-in-fact, and Agents.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-fact and Agents to represent and act for and on behalf of the company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney-in-Fact or Agent and revoke the power and authority given him.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other Officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

In witness whereof, the Ætna Casualty and Surety Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed, this 26th day of April, A. D. 1919.

THE ÆTNA CASUALTY AND SURETY COMPANY,
By NORMAN C. STEVENS, *Secretary.*

STATE OF CONNECTICUT,
County of Hartford, ss:

On this 26th day of April, A. D. 1919, before me personally came Norman C. Stevens, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Hartford, State of Connecticut; that he is the Secretary of the Ætna Casualty and Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

E. MATHER,
Notary Public.

My Commission Expires Jan. 31, 191–.

72 The Ætna Casualty and Surety Company, Hartford, Connecticut.

ÆTNA.

Certificate of Authority of Resident Assistant Secretary.

Know all men by these presents that George J. Kesel has been and is hereby appointed Resident Assistant Secretary of The Ætna Casualty and Surety Company, of Hartford, Connecticut, at Syracuse, N. Y., and as such Resident Assistant Secretary has power and authority to affix the seal of the Company to, and attest on behalf of the Company, any and all bonds and undertakings, and all bonds and undertakings sealed and attested by him, when signed by a duly appointed Resident Vice-President, shall be as valid and binding upon the Company as if said bonds and undertakings had been sealed and attested by the Secretary.

This appointment is made under and by authority of the following By-Law adopted by the Board of Directors of the Company at a meeting duly called and held on the 28th day of December, 1911.

Article 8. Resident Officers, Attorneys-in-fact, and Agents.

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-fact and Agents to represent and act for and on behalf of the company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any

time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney-in-Fact or Agent and revoke the power and authority given him.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other Officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

In witness whereof, the Ætna Casualty and Surety Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed, this 10th day of March, A. D. 1919.

THE ÆTNA CASUALTY AND SURETY COMPANY,
By NORMAN C. STEVENS, *Secretary.*

STATE OF CONNECTICUT,
County of Hartford, ss:

On this 10th day of March, A. D. 1919, before me personally came Norman C. Stevens, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Hartford, State of Connecticut; that he is the Secretary of the Ætna Casualty and Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

E. MATHER,
Notary Public.

My Commission Expires Jan. 31, 191–.

73 The Ætna Casualty & Surety Company of Hartford, Connecticut.

Financial Statement as of December 31, 1918.

Assets.

Mortgage Loans		$1,442,100.00
Collateral Loans		605,815.05
Stocks & Bonds		6,591,985.15
Unpaid Premiums Subsequent to October 1, 1918		1,498,223.70
Unpaid Premiums prior to October 1, 1918		84,603.31
Cash in Office & Banks		2,094,271.96
Accrued Interest		131,330.82
All other Assets		290,250.84
Total Assets		12,738,580.83
Deduct Assets not Allowed by Insurance Departments viz.:		
Unpaid Premiums prior to October 1, 1918	84,603.31	
Other Assets	171,826.01	
		256,429.32
Admitted Assets on basis allowed by Insurance Departments		12,482,151.51

Liabilities.

Premium Reserve		$3,496,180.54
Claim Reserve		2,997,002.49
Reserve for Accrued Taxes		368,347.62
Reserve for other Liabilities		368,353.84
Reinsurance in other Cos.		11,559.95
Total Liabilities except Capital		7,241,444.44
Surplus	3,497,136.39	
Less Assets not allowed by Insurance Departments	256,429.32	
Surplus on basis allowed by Insurance Departments	3,240,707.07	
Capital Stock	2,000,000.00	
		5,240,707.07
Total		12,482,151.51

STATE OF CONNECTICUT,
County of Hartford, ss:

C. H. Remington, being duly sworn, says: that he is Assistant Treasurer of The Ætna Casualty and Surety Company and that, to the best of his knowledge and belief, the foregoing is a true and correct statement of the financial condition of said Company as of December 31, 1918.

C. H. REMINGTON,
Assistant Treasurer.

Subscribed and sworn to before me this 8th day of April, 1919.

[Seal E. A. Giddings, Notary Public, Hartford County.]

E. A. GIDDINGS,
Notary Public.

My Commission expires Feb. 1, 1923.

74 [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Department. In the Matter of the Claim of George Sweeting, Claimant-Respondent, against American Knife Company, Employer, and Ætna Life Insurance Company, Insurance Carrier, Defendants-Appellants. Certificate of Lodgment. William H. Foster, Attorney for Appellants, Office and Post Office Address, Syracuse, N. Y.

75 Supreme Court of the United States.

AMERICAN KNIFE COMPANY and ÆTNA LIFE INSURANCE COMPANY,
Plaintiffs-in-error,

against

GEORGE SWEETING, Defendant-in-error.

Prayer for Reversal.

To the Supreme Court of the United States:

Come now the American Knife Company, Employer, and Ætna Life Insurance Co., Insurance Carrier, plaintiffs-in-error, and pray for a reversal of the order of the Supreme Court of the State of New York herein entered in the office of the Clerk of the Appellate Division thereof, in the Third Judicial Department of said State on the 6th day of May, 1919, affirming a decision and award of the State Industrial Commission of said State, a reversal of which is likewise prayed, entered on the 8th day of April, 1918; and plaintiffs-in-error further pray for a reversal of a judgment of the Court of Appeals

of said State, rendered on the 8th day of April, 1919, upon which said order hereinbefore first mentioned was entered.

And your petitioners will ever pray.

Dated May 9th, 1919.

ROBERT E. WHALEN,
Of Counsel for American Knife Co., Employer, and Ætna Life Insurance Co., Insurance Carrier.

76 Supreme Court of the United States.

AMERICAN KNIFE COMPANY and ÆTNA LIFE INSURANCE COMPANY, Plaintiffs-in-error,

against

GEORGE SWEETING, Defendant-in-error.

Petition for Writ of Error.

To the Supreme Court of the United States and to the Honorable Justices thereof:

The petition of the American Knife Co., Employer, a corporation organized and incorporated under the laws of the State of New York, and the Ætna Life Insurance Company, Insurance Carrier, an insurance corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Connecticut, and having been duly authorized to transact the business of insurance in the State of New York as an insurance corporation respectfully shows:

First. On or about the 21st day of December, 1917, the above named George Sweeting commenced before the State Industrial Commission of the State of New York a special proceeding against your petitioners and therein alleged:

(*a*) That said George Sweeting at about two o'clock in the afternoon of Dec. 21, 1917 while employed as a grinder at the plant of his employer in the Village of Baldwinsville, and while burring out a slot on a planing knife the emery wheel broke, and the broken parts of said wheel flew into his face, splitting his nose the entire length thereof, injuring his jaw bone and loosening his teeth.

(*b*) That aforesaid injuries to said George Sweeting disabled him from the date of said accident and for a period of 12 weeks and 4 days for which loss of earning power he claimed, in accord-
77 ance with the provision of Chapter 41 of the Laws of 1914 of the State of New York, commonly known as the Workmen's Compensation Law, compensation which said State Industrial Commission thereafter awarded to said George Sweeting in the amount of $123.42 which sum your petitioners have paid.

(*c*) That by reason of his said injury as aforesaid, said George Sweeting had also sustained "serious facial and head disfigurement" for which he claimed a further allowance which said State Industrial Commission made to him in the sum of Twenty-five hundred Dollars ($2500.00), by virtue of the amendment, made by Chapter 622 of

the Laws of 1916 of the State of New York, to Subdivision 3 of Sec. 15 of said Workmen's Compensation Law, whereby "in case of an injury resulting in serious facial or head disfigurement the commission may in its discretion, make such award of compensation as it may deem proper and equitable, in view of the nature of the disfigurement, but not to exceed three thousand five hundred dollars."

Second. In said proceeding before the State Industrial Commission your petitioners appeared and contended that to make to said George Sweeting any award for facial or head disfigurement under the provisions of said amendment to Subdivision 3 of Section 15 of said Workmen's Compensation Law would be tantamount to making an award not for loss of earning power, but for damages, and would, therefore, deprive your petitioners of their property without due process of law, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Third. The written decision and award which said State Industrial Commission, after hearing the allegations and proofs of the parties, entered on the 27th day of May, 1918, overruled the contention of your petitioners specified in paragraph Second of this petition, but contained no finding that said facial and head disfigurement had in any wise impaired the earning capacity of said George Sweeting, to whom said decision and award decreed
78 that your petitioners pay for compensation said sum of $123.42, and for said facial and head disfigurement, the said further sum of $2,500.00.

Fourth. From said decision and award of said State Industrial Commission your petitioners duly appealed to the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, where, upon the argument of said appeal which duly came on to be heard, your petitioners, through counsel, duly urged against the validity of said award of $2,500.00 for said facial and head disfigurement the contention hereinbefore specified in paragraph Second of this petition, but said Appellate Division of the Supreme Court overruled said contention and, by an order bearing date November 12th, 1918, and entered in the office of the Clerk of said Appellate Division on the 19th day of November, 1918, said Appellate Division wholly affirmed said decision and award of said commission so entered on the 27th day of May, 1918.

Fifth. From said order of said Appellate Division your petitioners duly appealed to the Court of Appeals of the State of New York, which was and is the highest court of said state in which could be had a decision of the question so raised by said contention of your petitioners hereinbefore specified in paragraph Second of this petition, and which contention your petitioners, through counsel, duly urged upon the argument of said appeal to the Court of Appeals of the State of New York which duly came on to be heard. But said Court of Appeals overruled said contention of your petitioner and, by its judgment rendered April 8th, 1919, said Court of Appeals affirmed said order of said Appellate Division of the Supreme Court, to which said Court of Appeals sent down its remittitur, consisting of a copy of the said judgment of said Court of Appeals and of the papers upon

which said Court of Appeals made its judgment, and said remittitur was filed on the 9th day of April, 1919, in the office of the clerk of said Appellate Division where said remittitur now remains of
79 record. Upon said remittitur a final order, reexamination and reversal of which by this court your petitioners seek, was entered on the 6th day of May, 1919, in the office of the Clerk of said Appellate Division, whereby the said judgment of the Court of Appeals herein became the order of said Appellate Division, and the sum of $99.50 costs of said appeal to said Court of Appeals, was awarded against your petitioners.

Sixth. In said judgment of the Court of Appeals, as well as in said final order thereon so entered on the 6th day of May, 1919, in the office of the Clerk of said Appellate Division, there was drawn in question the validity of a statute of the State of New York, to wit, said amendment made by said Chapter 622 of the laws of 1916 to Subdivision 3 of Section 15 of said Workmen's Compensation Law, upon the ground of the repugnancy of said statute to the due process clause of the Fourteenth Amendment to the Constitution of the United States, but the decision was in favor of the validity of such statute.

Seventh. By virtue of the provisions of said Workmen's Compensation Law said State Industrial Commission, which is now composed of John Mitchell, Edward P. Lyon, James M. Lynch, Henry D. Sayer and Frances E. Perkins, appeared by the Attorney General of the State of New York both in said Appellate Division and in said Court of Appeals, in support of the validity of said statute thus brought up for review by said appeals.

Wherefore, your petitioners pray that a writ of error may be allowed and issued, directed to the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, commanding said Appellate Division to send to the Supreme Court of the United States the record of all and singular the record, and papers in said special proceeding and for citation and supersedeas to stay execution, to the end that the errors to
80 which your petitioners complain herein and in the assignment of errors herein filed may be reviewed and, if errors be found, correctly conformably to the Constitution and Laws of the United States.

And your petitioners will ever pray.

Dated, May 9th, 1919.

AMERICAN KNIFE COMPANY,
Employer, and
ÆTNA LIFE INSURANCE CO.,
Insurance Carrier,
By ROBERT E. WHALEN, *Counsel.*

81 STATE OF NEW YORK,
City and County of Albany, ss:

Robert E. Whalen being duly sworn deposes and says that he is the regularly retained counsel for the petitioners, American Knife

Co., Employer, and Ætna Life Insurance Company, Insurance Carrier, in this proceeding. That he has read the foregoing petition, the contents whereof he knows to be true.

That the reason why this verification is made by deponent is that said petitioners are corporations none of whose officers reside or are within the County of Albany, State of New York, where deponent resides and has his place of business.

ROBERT E. WHALEN.

Subscribed and sworn to before me this 9th day of May, 1919.

[Seal Edith L. Jones, Notary Public, Albany County, N Y.]

EDITH L. JONES,
Notary Public, Albany County, N. Y.

82 Supreme Court of the United States.

AMERICAN KNIFE COMPANY and ÆTNA LIFE INSURANCE COMPANY, Plaintiffs-in-error,

against

GEORGE SWEETING, Defendant-in-error.

Assignment of Errors.

Come now the American Knife Co., Employer and Ætna Life Insurance Company, Insurance Carrier, Plaintiffs-in-error, and make and file this their assignment of errors:

The Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York in its order entered May 6th, 1919, whereby the judgment of the Court of Appeals of the State of New York rendered April 8th, 1919, was made the judgment of said Appellate Division, erred, as did also said Court of Appeals and the State Industrial Commission of the State of New York, in overruling the contention of your petitioners that to make to said George Sweeting an award in this proceeding for facial and head disfigurement, under the amendment made by Chapter 622 of the Laws of 1916 of the State of New York to Subdivision 3 of Section 15 of the Workmen's Compensation Law of said state, would deprive your petitioners of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

Dated, May 9th, 1919.

ROBERT E. WHALEN,
Of Counsel for American Knife Co., Employer, and Ætna Life Insurance Co., Insurance Carrier.

83 [Endorsed:] (Original.) Supreme Court of the United States. American Knife Company, Employer, and Ætna Life Ins. Co., Insurance Carrier, Plaintiffs-in-Error, against George Sweet-

ing, Defendant-in-Error. Prayer for Reversal, Petition for Writ of Error, and Assignment of Errors. Robert E. Whalen, of Counsel for Plaintiffs-in-Error, Office and Post Office Address, 126 State Street, Albany, N. Y.

84 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court, Appellate Division, in and for the Third Judicial Department of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, Appellate Division, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between American Knife Company and Ætna Life Insurance Company and George Sweeting, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being
85 repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said American Knife Company and Ætna Life Insurance Company, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the fourteenth day of May, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by
LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States, October Term, 191–. American Knife Company and Ætna Life Insurance Company, Plffs. in Error, vs. George Sweeting. Writ of Error.

86 UNITED STATES OF AMERICA, *ss:*

To George Sweeting, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court, Appellate Division, in and for the Third Judicial Department of the State of New York, wherein American Knife Company and Ætna Life Insurance Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Louis D. Brandeis, Associate Justice of the Supreme Court of the United States, this Fourteenth day of May, in the year of our Lord one thousand nine hundred and nineteen.

LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

Due and personal Service of a copy of the within citation is hereby admitted this 16th day of May, 1919.

CHARLES D. NEWTON,
(E. C. A.),
Attorney General of the State of New York.

Endorsed on cover: File No. 27,126. New York Supreme Court Appellate Division, 3d Judicial Department. Term No. 1040. American Knife Company and Ætna Life Insurance Company, plaintiffs in error, vs. George Sweeting. Filed May 21st, 1919. File No. 27,126.

BRIEF OF PLAINTIFFS-IN-ERROR.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No. 375

AMERICAN KNIFE COMPANY AND ÆTNA LIFE INSURANCE COMPANY,
Plaintiffs-in-Error,

vs.

GEORGE SWEETING.

In error to the Supreme Court, Appellate Division Third Judicial Department of the State of New York.

Statement of the Case.

This case involves (transcript page 38) the constitutionality, under the due process clause of the Fourteenth Amendment to the Constitution of the United States, of the "disfigurement clause" which, added by Chapter 622 of the laws of 1916 of the State of New York to subdivision 3 of Section 15 of the New York Workmen's Compensation Law, provides that "In case of an injury resulting in serious facial or head disfigurement, the Commission may in its discretion make such award or compensation as it may deem proper and equitable in view of

the nature of the disfigurement, but not to exceed three thousand five hundred dollars."

So much of the New York Workmen's Compensation Law, thus amended, as is deemed necessary to the decision of this cause, is printed as Appendix "A" on (p. 17 to 32, inclusive) of the brief in the Bianc case, which is No. 374 upon the docket of the present term of court.

Section 19, added to Article 1 of the Constitution of the State of New York in 1913, effective January 1, 1914, is also printed in the brief in the Bianc case, as Appendix "B" thereof (at p. 33) which is No. 374 upon the docket of the present term of this court. It is also printed in full in 243 U. S. at pp. 195-196.

This proceeding was commenced before the State Industrial Commission of the State of New York, a Commission established by the Workmen's Compensation Law, by filing with said Commission a notice of accident by the employer (Transcript pp. 2-3-4) dated December 21, 1919. Thereafter and on February 18, 1918, the claimant, defendant-in-error, filed a claim for compensation (Transcript pp. 5-6-7) stating that on the 21st day of December, 1917, while in the employ of one of the plaintiffs-in-error, he was working on an emery wheel at the plant of his employer; that the wheel broke and a piece of the emery wheel struck him in the face on the nose between the eyes; that as a result thereof, he split the entire length of his nose, injured his jaw bone, loosened his teeth, injured his head, smashed his nose and disfigured his nose and face. He was disabled for a period of 12 weeks and 4 days for

which disability compensation was paid. (Transcript p. 15.)

That thereafter on the 23rd day of May, 1918, the case came on for a hearing before Commissioner Lynch, one of the Commissioners of the State Industrial Commission, and an award for Two Thousand Five Hundred Dollars was made on account of serious facial disfigurement, and also an allowance made to his attorney of One Hundred Dollars with the understanding that out of the One Hundred Dollars the attorney was to take care of the doctor's bill for examination. At that time the following objections to an award for facial disfigurement were made (Transcript p. 20). "The award of $2,500, in view of the claimant's station in life and the nature of his work, is excessive. I object to making of any award on the ground that the amendment to subdivision 3 of section 15 of chapter 622 of the Laws of 1916, providing for serious facial disfigurement is unconstitutional in that it assesses damages without the right of a trial by jury in addition to paying compensation for disability.

2nd. It is unconstitutional in that it is contrary to the constitution of the United States and the constitution of the State of New York in that it takes property without due process of law.

3rd. The Compensation Law of New York State being a compulsory act, compensation cannot be awarded for disability and additional compensation for damages for disfigurement in violation of the constitution of the United States and the constitution of the State of New York.

4th. Chapter 622 of the Laws of 1916 added sec-

tion 15 of subdivision 3 of the Workmen's Compensation Law of the State of New York is unconstitutional and void."

The Commission, however, overruled the objections and on the same day made its decision and award, (Transcript p. 23), as the statute designates the determination of the Commission. In addition to the previous awards for disability, it was also provided (Transcript p. 23). Award of Compensation is made against the American Knife Co., Employer, and Ætna Life Insurance Company, Insurance Carrier, to George Sweeting, Jr., Injured Employee, in the sum of $2,500.00 on account of and in view of the serious facial disfigurement resulting from the injuries sustained on December 21, 1917; the fee of H. M. Van Bergen, Esq., is approved at the sum of $100.00 with the understanding that he is to pay the bill of Dr. Law, and such sum is made a lien upon this award.

The Appellate Division of the Supreme Court in the Third Judicial Department, unanimously and without opinion affirmed the decision and award of the Commission. Transcript pp. 23-24-25.) On further appeal taken to the Court of Appeals, the Appellate Division's order of affirmance was in turn affirmed (226 N. Y. 199). The opinions of the Court of Appeals are printed at pages 30 to 33 of the transcript of the record in this case.

The Court of Appeals sent down its remittitur to the Appellate Division to which the writ of error from this court is directed. (Transcript pp. 29, 49.)

Specification of Errors.

Plaintiffs-in-Error contend that the Court of Appeals as also the Appellate Division and the State Industrial Commission erred in not holding that to make to Defendant-in-Error an award for facial or head disfigurement under the provisions of Section 15 of the Workmen's Compensation Law would deprive Plaintiffs-in-Error of their property without due process of Law in contravention of the provisions of the 14th amendment to the Federal Constitution.

Argument.

Statement of Facts.

On December 21, 1917, at 2:15 P. M. while the claimant, employed by the Knife Company, was burring out slot on planes knife, he cramped the knife on an emery wheel, which broke the wheel and the broken parts of the wheel flew in his face badly lacerating the nose. (Transcript p. 3.) The attending physician in his report gives a description of the nature and extent of injury as "deep cut on left side of upper lip, deep cut extending from upper lip through nares to floor of nose. Lettum broken and same cut, extending across the bridge of nose to right side of nose." For this injury claimant was paid 12 weeks and 4 days, or during the time he was disabled. In addition thereto he suffered a disfigurement of the face from cut on lip and injury to nose. (Transcript p. 4.) For this disfigurement the Commission has awarded him $2500.00. (Transcript pp. 21-23.) The nature of said disfigurement consists of a multiple scar extending longitudinally and transversely over the en-

tire nose. There is a scar extending from the left angle of the nose down to the mouth near the medium line of the mouth. There is another small scar extending from the left angle of the nose obliquely towards the left cheek. (Transcript p. 13.)

There is absolutely no testimony in the record to show show that claimant's earnings have been decreased as a result of his disfigurement or that he has been unable to obtain work as a result thereof beyond the period for which he has already been paid. In fact the method of proving the damages taken by the claimant is that he is a resident of a community, a member of the church, attends various functions of the church and also of the community in which he lives and not in any measure to show that his earnings have been decreased. (Transcript pp. 16-17.)

The accident was caused through no fault of his employer. There is no finding that the claimant's earnings have been decreased or that he has been unable to earn anything as a result of his disfigurement. There has been no finding that the accident was caused through any fault, carelessness or negligence on the part of the employer.

POINT I.

An award for disfigurement under the Workmen's Compensation Law deprives the employer without fault, of its property without due process of law.

1. *Such an award is not compensation but damages.*

This Court in N. Y. C. R. R. Co. vs. White, 243 U. S. 188, Mr. Justice Pitney, writing the opinion, says:

> "Compensation under the Act is not regulated by the measure of damages in negligence suits, but in addition to providing medical, surgical or other like treatment, it is based solely upon loss of earning power being graduated according to the average weekly wage of the employee, and the character or duration of the disability, whether partial or total, temporary or permanent." (Page 93.)

In interpeting this section of the Compensation Law, the New York Court of Appeals in the Matter of Erickson vs. Preuss, 223 N. Y. 365, says at Page 368:

> "The Commission can now make an award for serious facial or head disfigurement even though such disfigurement does not diminish or impair the earning capacity of the claimant; the amount is to be such as the Commission deems proper and equitable in view of the disfigurement not exceeding $3500. Concurrent awards may be made; one for serious facial or head disfigurement, and one for disability or loss of earning power. If so made, then it should clearly appear that the award for facial or head disfigurement does not include anything for diminished earning power."

Erickson vs. Preuss, 223 N. Y. 365-368.

From this it will be plainly seen that an award for disfigurement has been held to be damages. In the case at bar the New York Court of Appeals, Cardozo J., writing the opinion (Transcript p. 31), says:

> "The common law gave the workmen compensation for pain and suffering as well as for loss of earnings *when the employer was at fault.* The Statute takes that remedy away and substitutes insurance within prescribed limits irrespective of fault. Pain and suffering are part of the risks of the employment. The Legislature may make them part of the risks of insurance the one restriction on its power is that the burden must be reasonable.
>
> *Mountain Timber Co. vs. Washington*, 243 U. S. 219, 240 and 241.
> *New York Central Railroad vs. White*, 243 U. S. 188-207.
>
> The statutes would stand, therefore, though facial disfigurement were unrelated to loss of earnings." (Italics ours.)

As I read the White case the New York Compensation law was held constitutional, because under the common law the injured workman was left to bear the greater part of the industrial accident loss, which, because of his limited income he was unable to sustain so that he and those dependent upon him were overcome by poverty, frequently became a burden upon public or private charity, and the Compensation Law substituted therefor a system by which the injured workmen received compensation for his injuries based solely upon loss of earning power according to the average weekly wage at the time of his injury. It relieved the employer from responsibility for damages measured by common law standards, payable in cases

where he, or those for whose conduct he was answerable, were found to be at fault, and required him to pay a reasonable and definite scale by way of compensation for the loss of earning power incurred in a common enterprise irrespective of the question of negligence instead of leaving the entire loss to rest where it may chance to fall—that is upon the injured employe or his dependents.

New York Central Railroad vs. White, 243 N. Y. 188.

When the amendment under scrutiny is interpreted to mean other than loss of earnings, as it has been in the New York courts, it is not a valid exercise of the police power within the rule laid down in the White case. It is not compensation for loss of earnings, but damages.

2. *The award for disfigurement in this case is not based upon impairment of earnings but upon damages.*

There is nothing in the attending physician's report to show that the claimant has lost or will lose his earning capacity as a result of his disfigurement. In answer to the question: "From what period from the date of accident, is disability likely to exist?" the doctor says: "Seven weeks." (Transcript p. 3.)

Again in answer to the question: "From what period from the date of accident, in disability likely ly to exist?" the doctor answers: "From a surgical viewpoint, six to eight weeks, from a vocational, six weeks. (Transcript p. 11.) Claimant was incapacitated from work for a period of twelve weeks and four days. (Transcript p. 15.) The claimant has made no attempt to show that his earning capacity

has been diminished or impaired, but rather takes a different method and shows damages. (Transcript p. 16.)

There is nothing in the record to show that as a result of disfigurement the claimant is liable to become a public charge and as a result thereof that those dependent upon him will become a charge upon public or private charity.

It is probably true that a person who has a disfigurement may have suffered pain and also have a certain feeling of timidness, but this has no relation whatever upon loss of earning power. As was said by this court in the White case: "The physical suffering must be borne by the employe alone, the laws of nature prevent this from being evaded or shifted to another, *and the statute makes no attempt to afford an equivalent in compensation, but besides there is the loss of earning power and the loss of that which stands to the employe as his capital in trade.* This is a loss arising out of the business, and however it may be charged up, is an expense of the operation, as truly as the cost of repairing broken machinery or any other expense that ordinarily is paid by the employer. Who is to bear the charge? It is plain that, on grounds of natural justice, it is not unreasonable for the State, while relieving the employer from responsibility for damages measured by common law standards and payable in cases where he or those for whose conduct he is answerable are found to be at fault, to require him to contribute a reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise, irrespective of the ques-

tion of negligence, instead of leaving the entire loss to rest where it may chance to fall—that is, upon the injured employee or his dependents." (pp. 203-204.)

"The subject matter in respect of which freedom of contract is restricted is a matter of compensation which human life or limb, loss or disability incurred in course of hazardous employment, and the public has a direct interest in this as affecting the common welfare." (P. 206.) (Italics ours.)

In Mountain Timber Co. vs. Washington, 243 U. S. 219, this court reiterated its statement that it is a reasonable exercise of the police power to relieve employers from common law liability, and in place thereof to require them to contribute reasonable amounts according to a reasonable and definite scale by way of compensation for loss of earning power to the injured employee or his dependents instead of leaving the entire loss to rest where it may chance to fall—that is upon particular injured employees and their dependents. (Pp. 236-243.)

In Arizona Copper Co. Ltd. vs. Hammer, decided June 9, 1919, and not yet officially reported, at the middle of page 8 of the pamphlet form of the opinion used for certification by the clerk, this Court affirmed by a divided court the power of the people of Arizona through constitutional and legislative provisions, to enact safeguards to keep injured ones and dependents of those whose lives are lost through accident due to the conditions of the occupation from becoming a burden upon the public.

3. *An award for disfigurement is not a reasonable exercise of the Police Power of the State.*

This Court in New York Central Railroad Company vs. White in sustaining the New York Compensation Law, said: "We recognize that the legislation under review does measurably limit the freedom of employer and employee to agree respecting the terms of employment *and that it cannot be supported except on the ground that it is a reasonable exercise of the Police Power of the State.* In our opinion it is fairly supportable upon that ground."

"The Police Power may be defined in general terms as that power which inheres in the legislature to make, ordain or establish all manner of reasonable regulations and laws whereby to preserve the peace and order of society and the safety of its members and to prescribe the mode and manner in which everyone may so use and enjoy that which is his own as not to preclude a corresponding use and enjoyment of their own by others." (Cooley on Constitutional Law, p. 338.)

The reason given by this court for holding that the Compensation Law can be sustained upon the ground that it is a reasonable exercise of the Police Power is as follows: "The subject matter in respect of which freedom of contract is restricted is the matter of compensation for human life or limb lost, or disability incurred in the cause of hazardous employment and the public has a direct interest in this as affecting the common welfare. * * * This statute does not concern itself with measures of prevention which presumably are impressed in their laws, but the interest of the public is not confined to these. One of the grounds of its concern with the continued life *and earning power* of the individual in its interest in the pre-

vention of pauperism with its concomitants in vice and crime. And in our opinion laws regulating the responsibility of employers for the injury or death of employees arising out of the employment bear so close a relation to the protection of the lives and safety of those concerned that they properly may be regarded as coming within the category of police regulations." (Pp. 206-7.)

The fact that compensation laws are within the scope of the Police Power is again mentioned in the Mountain Timber Company vs. Washington, case 243 U. S. 219-238-243. Also the opinion of Mr. Justice Pitney, Arizona Copper Company, Ltd., vs. Hammer, at pp. 3-4-5 of the clerk's pamphlet copy heretofore referred to.

If, as in the White case, the award under discussion were for loss of earnings and not for damages, as it has been shown, there would be some reason for the exercise of the Police Power, but inasmuch as the Court of Appeals of New York State has held that an amendment allowing disfigurement is not to compensate for loss of earnings, but is damages, it cannot be said that an award for disfigurement is in any way a subject for public concern and, therefore, not a valid exercise of the Police Power.

POINT II.

This court has not held that an award for disfigurement is a proper exercise of the Police Power.

In the White case, 243 U. S. 188, L. R. A. 1917, D. 1, p. 8, Mr. Justice Pitney says: "In viewing

the entire matter it cannot be pronounced arbitrary and unreasonable for the State to impress upon the employer the absolute duty of making a *moderate and definite compensation in money to every disabled employee* or in case of his death to those who were entitled to look to him for support, in lieu of the common law liability confined to cases of negligence.

"This, of course, is not to say that any scale of compensation, however insignificant on the one hand or onerous on the other, would be supportable. In this case no criticism is made on the ground that the compensation prescribed by the statute in question is unreasonable in amount either in general or in a particular case. Any question of that kind may be met when it arises." (Page 8.) Again on p. 7, he says: "Of course, we cannot ignore the question whether the new arrangement is arbitrary and unreasonable from the standpoint of natural justice. Respecting this it is important to be observed that the act applies *only to disabling or fatal personal injuries* received in the course of a hazardous employment in gainful occupation." (P. 7.) (Italics ours.)

The same is true of the Mountain Timber case.

In the Arizona Copper Company cases the question of disfigurement was not passed upon. Neither was it passed upon in Ball vs. William Hunt & Sons, Ltd. (1912) AC-496. The award was not based upon disfigurement, but upon inability to earn wages.

The case of Erickson vs. Preuss, 223 N. Y. 365, was cited in the concurring opinion of Judge Pound

in the case at bar. (Transcript pp. 32-33.) In that case an award was made for disfigurement to a woman employed in a laundry, and at the hearing before the State Industrial Commission no constitutional objection was raised to the award. Upon appeal to the Appellate Division we asked that court to say that if an award for disfigurement could be made it could be made only when the disfigurement was solely the cause of loss of earning power. No question of whether or not the disfigurement amendment was constitutional was ever raised in that case either before the Commission, Appellate Division or Court of Appeals of the State of New York. When the case came before the Court of Appeals we again asked that court to interpret the statute or amendment as meaning that an award for disfigurement can be made only when the disfigurement is the cause of loss of earnings. We pointed out to them that an award for disfigurement and an award for disability were concurrent awards. We also pointed out to them that this court in the matter of Winfield vs. New York Central Railroad, 216 N. Y. 284, and also their decision in Marhoffer vs. Marhoffer, 220 N. Y. 453, held that the theory of the workmen's Compensation Law was not indemnity to the workman for loss of a member or physical impairment as such, but compensation for disability to work made on the basis of average weekly wages. The court, however, said: "The Commission may now make an award for serious facial or head disfigurement even though such disfigurement does not diminish or impair earning capacity to the claimant; the amount is to be such as the Commission deems proper and equitable in view of the disfigurement not exceeding $3500.

Concurrent awards may be made; one for serious facial or head disfigurement, and one for disability or loss of earning power. If so made, then it should clearly show that the award for facial or head disfigurement does not include anything for diminished earning power.

Matter of Erickson vs. Preuss, 223 N. Y. 365.

It will, therefore, be seen that in the Erickson case no constitutional question was raised; the only question before the Court being the construction of the section. It would seem to follow if the construction of this amendment, placed upon it by the Court of Appeals of the State of New York is correct, that the section must clearly be in violation of the constitutional limitation. It cannot be said that this amendment to the New York act, as construed by the Court of Appeals of the State of New York is a reasonable, proper or valid exercise of the Police Power, and it can with equal force be said this construction takes property of the employer without due process of law.

POINT III.

The award of $2,500 for facial disfigurement in this case should be reversed, and the cause should be remanded for further proceedings not inconsistent with the decision of this court.

All of which is respectfully submitted.

Dated October 13, 1919.

WILLIAM H. FOSTER, of Counsel,
For Plaintiffs-in-Error.

FILED
OCT 10 1919
JAMES D. MAHER,
CLERK.

Brief for the State Industrial Commission of New York

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 375.

AMERICAN KNIFE COMPANY and AETNA LIFE INSURANCE COMPANY,
Plaintiffs in error,

against

GEORGE SWEETING,
Defendant in error

IN ERROR TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT.

CHARLES D. NEWTON,
Attorney-General.

E. C. AIKEN,
Deputy Attorney-General.

Of Counsel for the State Industrial Commission.

Brief for the State Industrial Commission

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919

No. 375

AMERICAN KNIFE COMPANY and AETNA LIFE INSURANCE COMPANY,
Plaintiffs-in-Error,

against

GEORGE SWEETING,
Defendant-in-Error.

IN ERROR TO THE SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT OF THE STATE OF NEW YORK.

STATEMENT OF CASE

On December 21, 1917, George Sweeting, Jr., was employed at the plant of the American Knife Company in Baldwinsville, N. Y., which is a company engaged in the manufacture of machine knives. He was employed at said plant in the grinding department, operating an emery wheel. (Fols. 37, 4, 5.) While operating said emery

wheel, the emery wheel exploded and broken parts of said wheel struck his face, splitting his nose the entire length thereof, injuring his jawbone and loosening his teeth. This resulted in a serious facial disfigurement. The bridge of the nose was destroyed, giving him what is commonly called a " flat " nose. There were other scars upon the face, making a permanent disfigurement. (Fols. 7, 8, 22, 23, 38.) For this disfigurement the State Industrial Commission of New York awarded him the sum of twenty-five hundred dollars ($2,500). (Fol. 39.) This award was unanimously affirmed by the Appellate Division of the Supreme Court (fol. 45), and by the Court of Appeals (fol. 52). The opinion of that court was written by Judge Cardoza, with a supplementary opinion by Judge Pound. (Fols. 55–60.) The plaintiffs-in-error contend that the amendment to the Workmen's Compensation Law which allowed an award for facial disfigurement is unconstitutional.

ARGUMENT

POINT I

No valid Constitutional objection has been raised and the award for facial disfigurement was properly made.

The Workmen's Compensation Law of New York was thoroughly discussed before this court on argument and reargument, and considered in the case of *New York Central R. R. Company* v. *White*, 243 U. S. 188, and a very exhaustive opinion written by Mr. Justice Pitney and concurred in by the entire court.

The gist of that opinion was that the common law gave the workman compensation for damages when the employer was at fault. That that remedy was taken away and a remedy given for damages received, irrespective of fault; that the Legislature had the right to place such a burden upon the employer, providing the same was reasonable.

Since the decision of that case this court has on two occasions had to deal with Workmen's Compensation Laws of other states. In the case of *Middleton* v. *Texas Power & Light Company*, this court had the question raised by the employe that the Texas Employers Liability Act was in conflict with the due process and equal protection provisions of the Fourteenth Amendment. The court, through Mr. Justice Pitney, stated in reference to the compensation allowed under said statute:

> "Such compensation is the statutory substitute for damages otherwise recoverable because of injuries suffered by an employe, or his death occasioned by such injuries, when due to the negligence of the employer or his servants; it being declared that the employe of a subscribing employer, or his representatives or beneficiaries in case of his death, shall have no cause of action against the employer for damages except where a death is caused by the wilful act or omission or gross negligence of the employer."

Again in the case of *Arizona Copper Company* v. *Hammer,* this court had under consideration the Employers Liability Law and the Workmen's Compulsory Compensation Law of Arizona. The Employers' Liability Law of Arizona designated certain employments as inherently hazardous and dangerous to workmen, and imposed upon the employer, without regard to the question of fault, liability and compensatory damages for accidental personal injuries or death of an employee arising out of and in the course of the employment and due to the condition or conditions of the occupation, in cases where such injury of the employe shall not have been caused by his own negligence.

Regarding this law, the court, through Mr. Justice Pitney says:

> "We are unable to say that the Employers' Liability Law of Arizona, in requiring the employer in hazardous industries to assume — so far as pecuniary consequences go — the entire risk of injury to the employee attributable to accidents arising in the course of the employment, and due to its inherent

conditions, exceeds the bounds of permissible legislation, or interferes with the constitutional rights of the employer."

It is further stated:

"It is objected that the responsibility of the employer under this statute is unlimited; but this is not true except as it is true of every action for compensatory damages where the amount awarded varies in accordance with the nature and extent of the damages for which compensation is made. It is said that in actions by employees against employers juries are prone to render extravagant verdicts. The same thing has been said, and with equal reason, concerning actions brought by individuals against railroad companies, traction companies, and other corporations."

And further:

"The statute says to the employer, in effect: 'You shall not employ your fellowmen in a hazardous occupation for gain, you being in a position to reap a reward in money through selling the produce of their toil, unless you come under an obligation to make appropriate compensation in money in case of their death or injury due to the conditions of the occupation.' The rule being based upon reasonable grounds affecting the public interest, being established in advance, and applicable to all alike under similar circumstances, there is, in our opinion, no infringement of the fundamental rights protected by the 14th Amendment.

"Some expressions contained in our opinion in the *White Case* (243 U. S. 203–205) are treated in argument as if they were equivalent to saying that if a state, making a legis-

lative adjustment of employers' liability, departs from the common-law system of basing responsibility upon fault, it must confine itself to a limited compensation, measured and ascertained according to the methods adopted in the compensation acts of the present day. Of course nothing of the kind was intended. In a previous part of the opinion (pp. 196–200) it had been shown that the employer had no constitutional right to continued immuity from liability in the absence of negligence, nor to have the fellow-servant rule and the rules respecting contributory negligence and assumption of risk remain unchanged. The statutory plan of compensation for injured workmen and the dependents of those fatally injured — an additional feature at variance with the common law — was then upheld; but, of course, without saying that no other would be constitutional. For if, as we held in that case, the novel statutory scheme of awarding compensation according to a prearranged scale is sustainable, it follows, perhaps *a fortiori* that the Arizona method of ascertaining the compensation according to the facts of each particular case — substantially the common-law method — is free from objection on constitutional grounds. Indeed, if a state recognizes or establishes a right of action for compensation to injured workmen upon grounds not arbitrary or fundamentally unjust, the question whether the award shall be measured as compensatory damages are measured at common law, or according to some prescribed scale reasonably adapted to produce a fair result, is for the state itself to determine. Where the compensation should be paid in a single sum after judgment recovered, as is required by the Arizona Employers' Liability Law just as under the common-law system in the case of a judgment

> based upon negligence, or whether it would be more prudent to distribute the award by instalment payments covering the period of disability or of need, likewise is for the state to determine, and upon this the plaintiffs in error can raise no constitutional question."

And Mr. Justice Holmes, in his concurring opinion also says:

> "But if it is thought to be public policy to put certain voluntary conduct at the peril of those pursuing it, whether in the interest of safety or upon economic or other grounds, I know of nothing to hinder. A man employs a servant at the peril of what that servant may do in the course of his employment, and there is nothing in the Constitution to limit the principle to that instance."

The argument of the plaintiff-in-error to the effect that an award for disfigurement deprives the employer of his property without due process of law should be turned about. If the employer's argument is sound, the employee is the one that is deprived of property without due process of law and not the employer. The employer contends, of course, that the Workmen's Compensation Law is constitutional and that it is intended to and does take the place exclusively of the remedy for negligence formerly existing against the railroad company for injuries received by its employees. (See *Shanahan* v. *Monarch Engineering Co.*, 219 N. Y. 469). Supposing, however, an employee receives an injury which does not disable him from working but removes say all the hair from his head or smashes his nose or cuts off his ears. If the employee sues the employer for this and it is a case where there is

negligence, the employer will reply that there is no remedy against the employee for the reason that the Workmen's Compensation Law is exclusive. The employee then petitions for compensation under the Workmen's Compensation Law and is met by the argument that the employer's property is taken without due process of law as there is no diminution of earning power. The employee, therefore, is deprived of any remedy against his employer for an actionable injury. It cannot be that the reasoning of Mr. Justice Pitney in the White case can be twisted into any such conclusion.

The argument of the appellant that facial disfigurement is wholly unrelated to ability to work will not bear the test of common experience. It is common knowledge and observation that an employer is influenced by a man's personal appearance and that serious damage to the face will continue to be a detriment to a man or woman's ability to earn during his or her entire life. It may be conceded that facial disfigurement is a special and unique form of disability; that it may not disable a man from actual manual labor as is the case with some other accidents. It is on account of this special consideration that the law has taken such cases out of the usual category of disabling accidents where award is made by the week for the disability suffered. Therefore, the general purpose of the law is for a weekly compensation, but the special feature of facial disfigurement is merely an exception as to the manner of payment for disability while the general considerations for the substitution of a theory of compensation for actions for negligence still obtain.

Awards for facial disfigurement, however, are in general accord with other parts of this law. The law provides for a definite amount for permanent partial disability, for the loss of any fingers or of any toes, for the loss of a leg, hand and arm, or an eye. All these are losses of portions of the body and similar to the loss of a nose or an ear. A man may lose one toe or several toes, without impairing his earning capacity. The loss of an eye is a loss of a part of the face. Of course, the loss of an eye is much more apt to interfere with a man's earning power than the loss of an ear or possibly a nose, but it is only a matter of degree.

The argument of plaintiff-in-error proceeds upon the assumption that disfigurement has no relation to earning capacity. He further assumes that:

> "Reparation for diminution or destruction of earning power being, then, the basis of constitutional sanction for compulsory payment of compensation, in the absence of fault on an employer's part, the award for disfigurement, under review herein, cannot stand."

By implication he assumes also, that in this or other cases of facial disfigurement, proof might be made of diminution of earning power on account of facial disfigurement.

It is not for this court to pass upon any such question of fact. The question here is as to the law itself — does it invade the constitutional rights?

Judge Cardozo says in the opinion in this case:

> "One cannot defeat a statute by a presumption that in its enactment the truths of

> life have been ignored. The presumption is, on the contrary, that they have been perceived and heeded. But one of the truths of life is that serious facial disfigurement has a tendency to impair the earning power of its victims. In some callings it would rule out altogether an applicant for employment. In most it would put him at a disadvantage when placed in competition with others."

In the case of *Ball v. William Hunt & Sons, Ltd.*, 5 B. W. C. C. 459, the House of Lords had before it the case of a workman who was blind in one eye, but was to all appearances two-eyed. As the result of a new accident the blind eye had to be removed and he could no longer conceal his infirmity. He was then quite unable to obtain work through either his old employers or from anywhere else. The House of Lords held that incapacity for work includes inability to get work, and that the man was entitled to compensation for the disfigurement.

All the features of the Compensation Law of New York were before this court upon the first argument and upon the reargument of the White case. The amendment in question had been adopted and was a part of the law at that time, being an amendment to subdivision 3 of section 15, added by Chapter 22, Laws of 1916, as follows:

> "In case of an injury resulting in serious facial or head disfigurement the commission may in its discretion, make such award or compensation as it may deem proper and equitable, in view of the nature of the disfigurement, but not to exceed three thousand five hundred dollars."

Counsel for the plaintiff-in-error contends (page 10), that due process of law contemplates

that damages shall be fixed and awarded, if at all, by a jury and not by a court. The amendment to the Constitution of the State of New York, however, provides " for the adjustment, determination and settlement with or without trial by jury of issue which may arise under such legislation."

It is recognized by a long list of decisions that the first ten amendments to the United States Constitution are not operative on the states:

Baron v. *Baltimore,* 7 Pet. 243.
Spies v. *Illinois,* 123 U. S. 131.
Barrington v. *Missouri,* 205 U. S. 483.
Twining v. *New Jersey,* 211 U. S. 93.

THE FACE

Counsel for plaintiff-in-error has spoken of the disfigurement provision of the law as the *beauty clause,* as if it were of minor importance — a thing of shreds and patches — implying that it did not much matter if a man should lose his face, provided his earning ability were not diminished. We have only to obtain the Chinese viewpoint to see that to lose one's face is the direst of calamities.

The soldier in the great war was more concerned over injury to the face than any other part of his body.

To woman the face is her dearest possession. Powder and rouge and paste, and divers other artifices are used to preserve it. The beauty of the paintings of the old masters is centered in the face. A half a million dollars would not purchase the Madonna di San Sisto of Raphael or the Mona Lisa of Leonardo da Vinci.

The face stamps the individual so that he may be recognized. As no two faces, so no two souls are absolutely alike. An unnumbered series of individual faces are formed after the same general type, without making any one the exact counterpart of the other.

Helen of Troy formed the motif of Homer's Iliad. As Marlowe says:

" Is this the face that launched a thousand ships
And burned the topless towers of Ilium?"

The face is the expression of the mind. It is that physical portion of us that distinguishes us from the brutes.

" See what a grace was seated on this brow
Hyperion's curls; the front of Jove himself;
An eye like Mars, to threaten and command;
A station like the herald Mercury
New-lighted on a heaven-kissing hill,—
A combination and a form indeed
Where every god did seem to set his seal
To give the world assurance of a man."

In the face are contained four senses which are the sources of pleasurable delight.

" Oh what a noble gift of heaven is the light of the eye," says Schiller.

With the ear we hear oftentimes " the still, sad music of humanity."

With the nose we may inhale all the perfumes of Araby. Properly formed it fits in with the scheme of personal beauty.

Cyrano de Bergerac's nose made it impossible for him to try to win the love of Roxane.

Then to some come the pleasure of taste, the delights of eating and drinking. Even the poet Keats is said to have put pepper on his tongue

that he might enjoy to a more superlative degree the coolness of the claret which he drank.

The sense of touch reaches consummation in the face, whether it be the passionate kiss of love, the chaste kiss of friendship or the Judas kiss of treachery.

The history of the world might be written in faces,— the snub nose of Socrates — the warty face of Cromwell — the majestic head of Washington — the strong, sad features of Lincoln.

Then there are the faces of women who have troubled the peace of the world — Helen of Troy and Cleopatra, Beatrice Cenci and Beatrice d'Este, Lady Hamilton and Aspasia, Queen Elizabeth, the virgin but virile Queen of England, and Joan of Arc, the martyred Maid of France.

We all look forward to see the faces of these men and women of history, as well as those of personal friends, for

"With the morn those angel faces smile
Which I have loved long since and lost awhile."

POINT II

THE ORDER OF THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, AFFIRMING THE AWARD OF THE WORKMEN'S COMPENSATION COMMISSION SHOULD BE AFFIRMED.

Respectfully submitted,
CHARLES D. NEWTON,
Attorney-General.
E. C. AIKEN,
Deputy Attorney-General.
Of Counsel for the State Industrial Commission.